INDIAN MILITARY LAW

By

Lt.-Colonel S. T. BANNING, C.B.E.

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PREFACE

THIS small book on Indian Military Law has been compiled at the urgent request of several Officers of the Indian Army, who have studied the subject with me, while preparing for their examinations. It is hoped that it may be found of service to Officers for this purpose, and to others who are concerned in the administration of Indian Military Law.

Any suggestions, which would make the book more useful, will be welcomed, and should be addressed to the care of the Publishers.

S. T. B.

LONDON,
January, 1924.

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APPENDIX

REFERENCES

A. Act.	Army Act, 1881.
A.I.	Army Instructions (India).
A.R.I.	Army Regulations, India, Vol. II., 1923.
C.C.P.	Code of Criminal Procedure, 1898.
Denman	"A Digest of the Law, Practice, and Procedure relating to Indictable Offences," by Arthur Denman, M.A., F.S.A., 1912.
Gen. Cl. Act ...	General Clauses Act, 1897.
I.A. Act	Indian Army Act, 1911.
I.A.O.	Indian Army Order.
I.A. (Sus. Sen.) Act	Indian Army (Suspension of Sentences) Act, 1920.
I.E. Act	Indian Evidence Act, 1872.
I.P.C.	Indian Penal Code, 1860.
I.R.F. Act	Indian Reserve Forces Act, 1888.
I.T. Act	Indian Tolls (Army) Act, 1901.
I.T.F. Act	Indian Territorial Force Act, 1920.
K.R.	King's Regulations for the Army and the Army Reserve, 1923.
Man.	"The Manual of Military Law (War Office)," 6th Edition, 1914.
M.I.M.L.	"The Manual of Indian Military Law," 2nd Edition, 1922.
O'Dowd	"Hints to Courts-Martial," by J. C. O'Dowd, Deputy-Judge-Advocate-General, 2nd Edition, 1883.
Phipson	"Manual of the Law of Evidence," by S. L. Phipson, M.A., 3rd Edition, 1921.

Powell	... ...	"Powell's Principles and Practice of the Law of Evidence," 10th Edition, by W. Blake-Odgers, M.A., LL.D., K.C., and W. Blake-Odgers, M.A., 1921.
r.	... ...	Army Act Rules.
R.F.R.	... ...	Rules under the Indian Reserve Forces Act, 1912.
R.P.	... ...	Rules of Procedure, 1907, made under the Army Act.
s.	... ...	Section of the Indian Army Act.*
T.F.R.	... ...	Rules under the Indian Territorial Force Act, 1921.

*In the Appendix, this reference, in the column of British Military Law, is to the Army Act 1881.

INDIAN MILITARY LAW

CHAPTER I

THE MILITARY CODE

THE code of Indian Military Law is laid down partly in Acts passed by the Government of India, and partly in Regulations made under the authority of those Acts, or in accordance with the custom of the Service.

The principal Acts relating to Indian Military Law are: the Indian Army Act, 1911; the Indian Reserve Forces Act, 1888; the Indian Tolls (Army) Act, 1901; the Indian Territorial Force Act, 1920; and the Indian Army (Suspension of Sentences) Act, 1920.

The Indian Army Act was passed in 1911, and came into force on 1 January, 1912, the date fixed by a notification of the Governor-General-in-Council, **s. 1 (2).** It is divided into thirteen chapters, dealing respectively with the following subjects:—

Chap. I. Application of the Act, and definitions.
Chap. II. Enrolment and attestation.
Chap. III. Discharge.
Chap. IV. Summary punishments.
Chap. V. Offences.
Chap. VI. Punishments.
Chap. VII. Penal deductions.
Chap. VIII. Courts Martial.
Chap. IX. Execution of sentences.
Chap. X. Pardons and remissions.
Chap. XI. Power to make Rules.
Chap. XII. Property of deceased persons, deserters, etc.
Chap. XIII. Miscellaneous.

Amendments in the Act can only be made by another Act of the Government of India; they are usually made by Indian Army (Amendment) Acts.

The principal Regulations are :—

The Army Act Rules, made by the Governor-General in Council under the authority of the Act. **s. 113.** These Rules must be published in the *Gazette of India*, and then have statutory effect, and are to be " judicially noticed " by all Courts of Law in India.

I.E. Act, s. 57.

They deal with :—

(*a*) The discharge of persons subject to the Act.
(*b*) Collective fines.
(*c*) Field punishment.
(*d*) The assembly and procedure of Courts of Inquiry, and administration of oaths by such Courts.
(*e*) The convening, constitution, and procedure of Courts-Martial.
(*f*) The confirmation, revision, and execution of findings and sentences of Courts-Martial.
(*g*) Making the necessary forms of orders relating to Courts-Martial.
(*h*) Any other matters necessary for carrying the Act into effect. **s. 113 (2).**

Notifications, made by the Governor-General in Council under the authority of the Act, *e.g.*—

(*a*) Notifying " frontier posts " under ss. 2 (1) (*c*), 22 (1).
(*b*) Applying the provisions of the Act to certain forces raised in India, under s. 5.
(*c*) Defining the relative rank of certain civilian officials, when subject to the Act, under s. 3 (1).

Rules made by the Governor-General in Council under the authority of the Indian Reserve Forces Act, the Indian Tolls (Army) Act, and the Indian Territorial Force Act.

Regulations made by the Commander-in-Chief under the authority of the last-named Act.

Army Regulations, India, Vol. II., issued by the Army Department for general guidance. It is specially laid down in the Order circulating them that they are to be interpreted " reasonably and intelligently."

King's Regulations, approved by His Majesty by virtue of His Royal prerogative, and issued by the Army Council, are, when not at variance with the last-mentioned Regulations, applicable to all ranks of the Indian Army. **A.R.I., Vol. II., Preface.**

Indian Army Orders, issued monthly by the Army Department. They deal with questions of discipline, organization, administration, training, etc.; and amendments in existing Regulations are notified in them.

The Army Act and Rules, as bound up in the Manual of Indian Military Law, with notes, are so published for the convenience of officers and others concerned. The notes, printed in smaller type after the section of the Act, or the Rule, to which they refer, are an interpretation of the latter, and have not the same authority as the Act itself or the Rule, though, as they are issued with the official sanction of the Army Department, they have great weight and should not be lightly disregarded. In referring to the Act or Rules the *section* (or *sub-section*) or *Rule* should be quoted, and not the page of the Manual upon which it appears. Thus :—

I.A.A., s. 7 (12) ; or r. 43 (A).

CHAPTER II

PERSONS SUBJECT TO INDIAN MILITARY LAW

THE title and preamble of the Act clearly show that it only applies to *Indian* officers, soldiers, and others in His Majesty's Indian Forces.

European and Eurasian officers, warrant officers and non-commissioned officers serving in regiments or departments of the Indian Army are subject to the British Army Act, with the modifications specified in that Act. **A. Act, ss. 175 (1), 176 (1), 180, 190 (8).**

Of those subject to the Indian Act some are subject always and in all places, whether in or out of India, while others are only so subject at stated times and under certain conditions.

The following tables show the various individuals who are subject in each class :—

(A) SUBJECT ALWAYS

Indian Officers, **s. 2 (1) (*a*)**; who are defined as persons commissioned, gazetted, or in pay as an officer holding Indian rank in H.M. Indian Forces. **s. 7 (2).** These officers hold commissions granted by the Governor-General of India. Their various ranks and precedence are laid down in A.R.I., Vol. II., 115.

Warrant Officers, **s. 2 (1) (*a*)**; who are defined as persons appointed, gazetted, or in pay as Indian warrant officers in H.M. Indian Forces. **s. 7 (3).** Their various ranks and precedence are laid down in A.R.I., Vol. II., 146.

Persons enrolled under the Act. **s. 2 (1) (*b*).** These are :—

(i) Non-commissioned Officers; *i.e.* persons attested and holding non-commissioned rank in H.M. Indian Forces, including an acting non-commissioned officer. **s. 7 (4).** Their various ranks and precedence are laid down in A.R.I., Vol. II., 146.
(ii) Combatants, who must be attested. **s. 11.**
(iii) Such other enrolled persons as are attested, in accordance with the directions of the Governor-General. **s. 11 ; r. 8.**
(iv) Non-combatants, who are enrolled only.

A list showing the various classes to be enrolled and attested, or to be enrolled only, is given in A.R.I., Vol. II., App. XXXI.

Officers and soldiers of the Indian Reserve Forces. **I.R.F. Act, s. 5.**

(B) Subject at Stated Times

Persons, who on active service, in camp, on the march, or at any frontier post specified by the Governor-General, are employed by, in the service of, followers of, or accompany any portion of H.M. Forces. **s. 2 (1) (*c*).** The Governor-General may by notification direct that such persons are to be subject as Indian Officers, Warrant Officers or Non-commissioned Officers. **s. 3 (1).** Such notifications have been gazetted assigning relative rank to certain civilian officials and subordinates. This relative rank is personal and does not entitle the holder to exercise any command or to be called by the title of the rank. **M.I.M.L., VIII., 9–11.**

Officers, Non-commissioned Officers, and men of the Indian Territorial Force, when—

(*a*) Called out in aid of the Civil Power or embodied.
(*b*) Attached to the Regular Forces.

(*c*) Undergoing military training ; in this last case with such modifications as may be prescribed.
I.T.F. Act, ss. 9 (2), 11.

All ranks of such bodies as, Military Police, Frontier Militia, Frontier Constabulary, or levies, to whom the Act might in special circumstances be applied, under the authority of the Governor-General. **s. 5.** Such application, except on active service, would be very exceptional. **M.I.M.L., VIII., 6.**

All ranks of the Indian States Forces, when employed on active service beyond the frontier of their own States, are governed by a State Code, which embraces the provisions of the Indian Army Act.
M.I.M.L., VIII., 8.

CHAPTER III

CRIMES AND PUNISHMENTS

Punishments

In the sections of the Act dealing with the various military offences, the punishment to which an offender is liable on conviction by Court-Martial is stated. In every case the law has laid down the maximum punishment which may be awarded, and allows the Court to award that maximum or such less punishment as the Act mentions ; *i.e.* one lower in the scale, given in s. 43.

Scale of Punishments

1. Death. The Court must direct in their sentence whether the offender is to be hanged or shot. **s. 104.** Sentence of death cannot be passed unless two-thirds at least of the members concur. **s. 87.**

2. Transportation for life or any period not less than seven years. The sentence begins to count from the date of signing the original proceedings. **s. 106.**

3. Imprisonment, rigorous or simple, for any period not exceeding fourteen years. The sentence commences from the date of signing the original proceedings. **s. 106.** The Court should invariably specify whether the imprisonment is to be " rigorous " or " simple," as unless they do so it must be treated as " simple " imprisonment. When the imprisonment is rigorous the Court may order the offender to be kept in solitary

confinement for part of the time, not exceeding three months in the whole, according to the following scale :—

(*a*) Not exceeding one month if the imprisonment does not exceed six months.

(*b*) Not exceeding two months if the imprisonment exceeds six months, but does not exceed one year.

(*c*) Not exceeding three months if the imprisonment exceeds one year. **s. 48.**

In carrying out the sentence, the solitary confinement must not exceed fourteen days at a time, with intervals between of not less duration than the periods of solitary confinement, and when the imprisonment exceeds three months, the solitary confinement must not exceed seven days in any month, with intervals of not less duration than the solitary confinement. **s. 110.**

4. Dismissal. This may be awarded in addition to any other punishment. **s. 47.** The sentence takes effect from the date of promulgation, or such subsequent date as the Commanding Officer directs ; except that, if combined with imprisonment which is carried out in military custody or with field punishment, it will not take effect till the date the offender is released ; or if combined with transportation or imprisonment carried out in a civil prison, it will not take effect till the date the prisoner is received into a civil prison. **r. 154** (A). Apart from sentence by Court-Martial an officer can be dismissed at any time by the Governor-General or the Commander-in-Chief ; any other person can be dismissed by these officers or by the Officer Commanding the Army, Army Corps, Division or Brigade, or other prescribed officer under whom he is serving. **ss. 13, 14 ; r. 161** (A) **; A.R.I., Vol. II., 231.** The conviction of an

officer by the Civil Power is to be reported to the Commander-in-Chief, who will decide if he is to be dismissed. **A.R.I., Vol. II., 218.** A certificate showing the cause of his dismissal must be given to the offender. **s. 17 ; r. 11** (A).

5. Field Punishment, which can only be awarded on active service, to ranks below that of warrant officer. **s. 45.** The rules for carrying out this punishment are as follows :—

   It may be for any period not exceeding three months, and may be Field Punishment No. 1, or Field Punishment No. 2. If sentenced to the former the offender may be kept in fetters or handcuffs, and secured to prevent escape ; he may be tied up in a fixed position for not more than two hours in any one day, or more than three days out of four, or twenty-one in all ; care must be taken to leave no permanent mark or injury ; (when the offender's unit is actually on the move he will be exempt from the foregoing). He may be subjected to hard labour as if he were undergoing rigorous imprisonment. If sentenced to the latter, the same rules apply, except that he may not be tied up in a fixed position. All offenders march with their units, carrying their arms and accoutrements, perform all their duties and extra fatigues, and are treated as defaulters. **r. 155.** For purposes of commutation field punishment stands in the scale next below dismissal. **s. 46.**

6. In the case of officers or warrant officers, suspension from rank, pay, and allowances for a period not exceeding two months. This takes effect, if no confirmation is necessary, from the date it is signed by the President, or if confirmation is necessary, from date of promulgation. **r. 154** (B).

7. Reduction, in the case of a warrant officer, to a lower rank or class (if any) of warrant officer, or in the case of a non-commissioned officer, to a lower grade or to the ranks. This may be awarded in addition to any other punishment. **s. 47.** The various ranks, appointments, and order of precedence of warrant and non-commissioned officers are laid down in A.R.I., Vol. II., 146. A sentence of reduction to or from an acting rank or an appointment is inoperative, *e.g.* Lance-Naick to Sepoy. **A.R.I., Vol. II., 260.** A non-commissioned officer sentenced by Court-Martial to transportation, imprisonment, field punishment, or dismissal is deemed to be reduced, but the Court should properly sentence him to reduction when awarding any of these punishments. **s. 49** and *note.* A warrant or non-commissioned officer, reduced to a lower rank or grade will take rank therein from the date of signing the original sentence of the Court.

A.R.I., Vol. II., 230.

8. In the case of officers, warrant officers, and non-commissioned officers, forfeiture of seniority of rank. This forfeiture will only affect *seniority* in the rank, and not the period of *service* in it. *e.g.* a Jemadar, promoted on 10 May, 1922, and sentenced to take rank and precedence as though appointed on 17 Oct., 1923, would, although only ranking for *seniority* from this latter date, still reckon all his service in the rank of Jemadar from 10 May, 1922, for all other purposes, such as pension.

9. In the case of officers, reprimand or severe reprimand, which may be administered publicly or privately as the Confirming Authority may direct. This punishment may be awarded in addition to any other. **s. 47.**

10. Forfeitures and stoppages as follows :—

(i) Forfeiture of service for the purpose of promotion, increased pay, pension, or any other prescribed purpose.

(ii) Forfeiture of any military decoration or military reward. This includes a good conduct badge and the pay attached thereto, and any gratuity, good service pay or pension or other military pecuniary reward. **s. 7 (15).**

(iii) Forfeiture, in the case of dismissal from the Service, of all arrears of pay and allowances and other public money due at the time of dismissal. This forfeiture goes to the State, not to compensate an injured individual.

(iv) Stoppages of pay and allowances to make good any loss or damage, provided that the total deductions shall not exceed in any one month one-half the pay and allowances for that month. **s. 50.** The amount so stopped will be applied in making good the loss or damage.

(v) On active service forfeiture of pay and allowances for a period not exceeding three months, commencing from the date of the sentence.

11. When dealing with civil offences Courts-Martial may award a fine if such punishment is assigned for the offence under the Indian Penal Code. **ss. 41, 42.** In such cases the fine may be stopped from the offender's pay and allowances to the extent of one-half such pay and allowances in any one month. **s. 50.**

Collective Fines

Whenever a weapon or part of a weapon forming part of the equipment of a half squadron or company,

etc., has been lost or stolen, a Court of Inquiry will be assembled to investigate the matter; and the Officer Commanding the Division or Independent Brigade, after recording his opinion, may impose a collective fine in respect of each article on the Indian officers, non-commissioned officers and men of the company, etc. concerned as he considers responsible to the following amounts, viz :—

Rifle or carbine	Rs.500
Pistol	Rs.175
Bolt	Rs.25

s. 21 ; rr. 156, 157.

Forfeiture of Pay

Although not a *punishment*, the following penal deductions may be made from the pay and allowances of a person subject to the Act, as a *consequential* forfeiture; viz. forfeiture of all pay and allowances for every day—

(*a*) Of desertion.

(*b*) Of absence without leave, unless in a case of absence not exceeding five days the Commanding Officer, or in any case the Court, remits the forfeiture. **r. 163** (B).

(*c*) As a prisoner of war, unless a Court of Inquiry decides he was not taken prisoner through his own fault. **r. 163** (C).

(*d*) Of imprisonment, awarded by a Criminal Court, a Court Martial, or a Commanding Officer.

(*e*) Of field punishment awarded by a Court-Martial or a Commanding Officer.

(*f*) While in custody—

(i) On a charge for an offence of which he is afterwards convicted by a Criminal Court or a Court-Martial.

(ii) On a charge of absence without leave for which he is awarded imprisonment or field punishment by a Commanding Officer.

(g) In hospital through sickness, which the Medical Officer attending him certifies to have been caused by an offence against the Act.

Absence or custody for six consecutive hours, whether wholly in one day or partly in one and partly in another, is reckoned as a day; where it extends to twelve consecutive hours or upwards it is reckoned as a whole day on any part of which the person was absent or in custody; where the absentee has missed a duty which was thereby thrown on another person it is reckoned as a day, no matter how short a time he was absent or in custody. **s. 50; A.R.I., Vol. I., 947.**

Illustrations

Sepoy A.	Absent from 10 p.m. 3 October to 3 a.m. 4 October	Forfeits no pay.
Sepoy B.	Absent from guard mounting at 9 a.m. till 9.20 a.m. same date (a man of the waiting guard having taken his place).	Forfeits 1 day's pay.
Sepoy C.	Absent from Commanding Officer's parade at 11 a.m.	Forfeits no pay.
Sepoy D.	Absent from 10 a.m. till 8.30 p.m. 5 October	Forfeits 1 day's pay.
Sepoy E.	Absent from 10 p.m. 5 October to 2 p.m. 6 October.	Forfeits 2 days' pay.
Sepoy F.	Absent from 10 p.m. 5 October till 1 a.m. 7 October.	Forfeits 3 days' pay.
Sepoy G.	Confined at 11 a.m. 8 October, for insolence to a Naick; and at 10 a.m. on 9 October awarded 7 days' rigorous imprisonment by his Commanding Officer.	Forfeits 7 days' pay.
Sepoy H.	Absent from 10 p.m. 8 October till 3 a.m. 9 October, when he returned and is confined; and at 10 a.m. the same day awarded 7 days' confinement to lines by his Commanding Officer.	Forfeits no pay.
Sepoy I.	Absent from 4 p.m. 8 October till 6 p.m. same day, when he returns and is confined; and at 10 a.m. on 9 October awarded 7 days' rigorous imprisonment by his Commanding Officer.	Forfeits 8 days' pay.

Any sum authorized by the Act to be deducted from pay and allowances may be deducted from any public money due to the person, except a pension. **s. 51.** Any of these deductions may be remitted by the Governor-General, or in the case of a prisoner of war by the Commander-in-Chief, or an Officer Commanding not less than an Independent Brigade, or the Officer Commanding the Forces in the field.

s. 52; r. 163 (A), (C).

Offences

Chapter V. of the Act classifies the various military offences, the system adopted being, that offences of like nature are grouped together, and the groups have been arranged in the order of their relative military importance. Taking these groups in their order:—

Offences in respect of Military Service

s. 25.—*Shamefully abandoning any Garrison or Post.*—This offence can only be committed by the person in command. The word "*post*" includes any position, whether fortified or not, which a detachment has been ordered to hold. Circumstances must be averred in the particulars of the charge and proved in evidence which show that the abandonment was "*shameful.*"

In the presence of an enemy, misbehaving in such a manner as to show cowardice.—The word "*enemy*" is defined to include any person in arms against whom it is a person's duty to act, **s. 7 (12)**; and thus will include a soldier who has "run amok," whom it is the duty of all ranks to endeavour to capture. **A.R.I., Vol. II., 213.** Hence a soldier, who through cowardice failed to take any necessary action, could be tried under this subsection.

A sentry sleeping on his post or quitting it without being regularly relieved.—Here "*post*" means the sentry's beat, which is pointed out to him when he is posted. A sentry found asleep a short way *off* his post cannot be charged with being asleep *on* his post, but may be charged with quitting it. Even though he has not been regularly posted, a soldier is liable for an offence committed on his part if, being one of the guard or body furnishing the sentry, he has undertaken the duties; but if he leaves his post it is necessary to prove he had been regularly posted. The budern of proof that he had authority to leave his post rests on the accused. **I.E. Act, s. 105.**

Forcing a safeguard.—A safeguard is a party of soldiers detached for the protection of some person or property. A sentry furnished by this party is part of the safeguard and to force him constitutes the offence. Actual force is not necessary to constitute the offence. A person disregarding the orders of such a sentry and entering the premises over which he is posted when warned not to do so, forces the sentry.

The maximum punishment for any offence against this section is death.

s. 26.—The offences mentioned in this section are similar to those dealt with in the last section, except that, as they are not committed on active service or in the circumstances mentioned in that section, the maximum punishment is imprisonment.

Mutiny and Insubordination

s. 27.—*Mutiny* is collective insubordination, or the combination of two or more persons to resist lawful military authority. The essence of the offence is the combination to resist authority, hence one man cannot mutiny alone, no matter how insubordinate he is. Nor would separate acts of insubordination committed by two or more persons be mutiny, unless it could be proved they were the result of an agreement.

Using or attempting to use criminal force to, or assaulting, his superior officer.—The term "*superior officer*" includes a warrant or non-commissioned officer, and as regards persons placed under his orders a warrant or non-commissioned officer of the British Army. **s. 7 (7); A.R.I., Vol. II., 216.** But it would not include persons set in authority over the accused who are neither officers nor come within the terms of this definition; *e.g.* Sisters of the Nursing Staff, or gangers or foremen of labour corps or followers on active service. An offence against such a person would therefore have to be laid under s. 39 (*i*). A Court-Martial is directed to take

"judicial notice" of all matters within the general military knowledge of the members, **s. 89,** which would include the various military ranks, so it would not have to be proved that the person assaulted, etc., was the superior of the accused unless they are of the same grade, when it would be necessary to prove that this was the case, and that the accused knew it. Unless the superior is in uniform, wearing the badges of his rank, it will be necessary to prove circumstances showing that the accused knew the other was his superior. **O'Dowd, p. 15.** Using criminal force is intentionally using any force to another person, without his or her consent, to commit an offence or knowing it will cause injury, fear, or annoyance to that person. **I.P.C., s. 350.** An assault is any gesture which causes a person to think that the other is about to use criminal force to him. Mere words do not amount to assault. **I.P.C., s. 351.**

Illustrations

Sepoy A. throws his boot across the barrack room at Havildar B. If it hits him he has used criminal force; if it misses him he has attempted to use criminal force.

Sepoy C., during a quarrel with Naick D., draws his bayonet in a threatening manner. This is an assault.

Force, or attempted force, when used in self defence and necessary for protection from injury, is justifiable, and would not be criminal. **I.P.C., s. 96.** Provocation, though not exonerating from guilt, would tend to mitigate the punishment. **Man., V., 23.**

Disobeying the lawful command of his superior officer.—A "*lawful command*" is one which is not only not contrary to the ordinary civil law, but is justified by military law. That is, it must relate to a military duty.

Illustrations

An officer gives an official letter to an orderly and tells him to take it to the Brigade Office. This is a lawful command.

An officer gives a letter containing a private bill which he owes and a five-rupee note to an orderly and tells him to take it to the shop and pay the bill. This is *not* a lawful command.

Officers in civil employment are not entitled to exercise any military command, **A.R.I., Vol. II., 216;** and a civilian employed in a military office cannot give a military order to soldiers employed under him. Disobedience of such an order would not bring the offender within this section; though he might be tried under s. 39 (*i*). **A.R.I., Vol. II., 239.**

Religious scruples are no justification for disobedience. The disobedience must refer to some command to be complied with at once. A man, who when ordered to do something at a future time, refuses and is confined at once, does not disobey, and if charged should be charged under s. 28 (*a*) or s. 39 (*i*). Neglect to obey an order through misapprehension or forgetfulness is not an offence under this section. Physical incapacity to comply with the order, naturally, furnishes an excuse for not obeying it.

Disobedience of orders of a general nature must be charged under s. 39 (*h*).

The maximum punishment for any offence against this section is death.

s. 28.—*Gross insubordination or insolence to his superior officer in the execution of his office.*—The Court must use their military knowledge in deciding whether the superior was in the "*execution of his office,*" as no precise definition can be given which would meet all cases. An officer or non-commissioned officer in barracks would usually be in the execution of his office. The fact that the superior was in plain clothes would not prevent him being in the execution of his office if he were exercising military authority, but it would be necessary to prove that there were reasonable grounds for the accused to know that this was the case. The conduct or, in the case of language, the actual words used or their substance must be stated in the particulars of the charge.

The maximum punishment for any offence against this section is imprisonment.

Desertion, Fraudulent Enrolment, and Absence without leave

s. 29.—*Desertion* is absence without leave with the intention of permanently quitting the Service or of evading a particular important military service.

The *intention* must be inferred from the circumstances of the case. Thus, the time the accused has been absent, whether he was dressed in plain clothes or not, or whether he surrendered or was apprehended, though none of these facts of themselves constitute the offence, would nevertheless be taken into consideration by the Court in deciding whether the offence was desertion or merely absence without leave. The fact that the accused had committed a serious offence just before absenting himself would be relevant as indicating an intention of remaining away to escape the consequences of that offence. The fact that a man has surrendered is no proof that he originally intended to return ; he may for some reason have changed his mind.

Attempting to desert consists of any act which if completed would result in desertion. Mere intention or preparation to desert would not amount to this offence. **O'Dowd, p. 58.**

Whenever a person subject to the Act deserts or is absent without leave, the Commanding Officer must at once notify (1) the local police, (2) the railway police, and (3) the civil authorities of the district to which the man belongs, informing them of the place and date of absence and particulars as to his name, appearance, and home, etc. **A.R.I., Vol. II., App. I.**

If the absence continues for sixty days, a Court of Inquiry is to be assembled as soon as practicable, to inquire into and record the fact of his illegal absence and deficiency of any Government property in his care or his kit. The Court usually consists of three officers, who are not themselves sworn, but who take evidence on oath or affirmation, which is recorded in writing.

The Court declare the place and date and period of such absence and any deficiency of kit, etc. Before declaring any such deficiency, however, the Court should take evidence that the man had the articles within a reasonable period beforehand. This declaration is then recorded in the Court-Martial Book of the Corps, and signed by the Commanding Officer; and if the man does not return he is deemed to be a deserter and is struck off the strength accordingly.

s. 126; r. 159.

If the absentee is afterwards put on his trial for desertion or absence without leave, a certified copy of this record in the Court-Martial Book is evidence of the facts recorded. The copy must be certified by the Officer having custody of the original record. **s. 91A, (3), (4).** If he has surrendered to or been apprehended by a Provost-Martial or other officer, or any portion of H.M. Forces, a certificate signed by the Provost-Martial, or officer, or the Commanding Officer of the body of troops is evidence of the fact, place, and date of such surrender or apprehension. Similarly, if the surrender or apprehension has been to or by a police officer, not below the rank of an Officer in charge of a Police Station, a similar certificate signed by such police officer is evidence of the matters stated. **s. 91A, (5), (6).** The accused must be identified as the person named in any of the above-mentioned records or certificates.

If the accused in his defence gives any reasonable excuse for his absence, and in support thereof refers to any Military or Civil Officer in the Government, or if it appears likely that such officer could prove or disprove the accused's statement, the Court shall refer the matter to such officer and adjourn; and the written reply of such officer, if signed by him, is admissible in evidence as though given on oath before the Court.

s. 92.

The maximum punishment for any offence against this section is death.

s. 30.—*Fraudulent enrolment.*—This is the offence committed by a man who without obtaining a regular discharge from the corps to which he belongs enrols in another or even the same corps. Although he quits his old corps he is not usually charged with desertion, as the fact of his re-enrolling shows he did not intend to *quit the Service*, though he has irregularly changed his corps. If, however, he absented himself from his old corps to avoid some particular service, *e.g.* active service, or embarkation for service abroad, then he might properly be charged both with the desertion and fraudulent enrolment. He can be tried as belonging to either corps, and held to serve in either, but is usually tried as belonging to the corps in which he is to be held to serve. The fact of enrolment can be proved by a certified true copy of his enrolment paper. **s. 91.**

Absence without leave.—The absence is reckoned from the first roll-call or parade, at which the absentee did not appear, and ends as soon as he returns or is apprehended. Involuntary absence, such as arrest by the Civil Power, is not absence without leave. If the absence is proved, the onus of proving that he had leave or other lawful excuse will rest on the accused. **I.E. Act, s. 105.** When the absence is from some particular parade or duty, it falls under clause (*f*), which will also include the offence of being late for parade as well as absence. It must be proved that the place and time were "*appointed,*" and that the accused had warning of them.

Whenever a unit or draft parades for embarkation or for entrainment for the port of embarkation, two senior non-commissioned officers, who are not proceeding with them, will attend the parade and record the names of any absentees, in order to give evidence at a Court of Inquiry or Court-Martial as to their absence. **A.R.I., Vol. II., 554.**

Absence from cantonment after tattoo.—Cantonment in this Act is not restricted to those stations which

are cantonments within the meaning of the Cantonments Act, 1910, but includes any station where troops are permanently or semi-permanently quartered.

The maximum punishment for any offence against this section is imprisonment.

Disgraceful Conduct

s. 31.—*Dishonestly misappropriating money, arms, equipments or military stores the property of the Government entrusted to him;* or *receiving any such knowing they have been misappropriated;* or *wilfully destroying or injuring such property.*—The money or stores, etc., must be the property which comes within this section; otherwise the offence will be one to be dealt with by the Civil Power, unless committed on active service or outside British India, in which case it would be an offence under s. 41.

Steals anything the property of the Government, or of any military institution, or person subject to military law; or *receives the same.*—The money or goods must be the property of persons or institutions specified in these clauses, otherwise it will be a civil offience, as in the preceding clauses.

A "*person subject to military law*" includes a person subject to the British Army Act. Theft is defined as moving any movable property with the intention of dishonestly taking it out of the possession of any person without that person's consent. **I.P.C., s. 378.** This wrongful intent, or *animus furandi*, must be present at the time of taking; if there is evidence from which the Court can infer this, the mere fact that the accused subsequently returned the stolen property will not purge the offence. **Denman, p. 26.** The stolen property must, if possible, be produced in Court and identified, or the reason for its non-production explained. If it has not been recovered the value should be stated in the particulars of the charge and proved in evidence in order that the Court may award

stoppages. **r. 20** (F). The ownership should also be stated and proved when the charge is under this section. Ownership cannot be laid in a deceased person. Theft of goods the property of different owners must not be included in the same charge. **r. 20** (A). The possession of recently stolen property is evidence that the person in whose possession it is found stole it, or throws on him the onus of proving that he got it honestly. This presumption of guilt will vary according to the nature of the property, and whether it is or is not likely to pass readily from hand to hand. Where the accused was found in recent possession of stolen property, of which he could give no satisfactory account, and it might reasonably be inferred from the circumstances that he was not the thief, it was held there was evidence that he received it knowing it to have been stolen. **Denman, p. 520.**

In a case of *receiving*, guilty knowledge is proved either by the direct evidence of the thief, or circumstantially, by proving the accused bought the goods very much below their value, or denied possession, or the like. But where the only evidence against the alleged receiver is that of the thief the Court should acquit. Where stolen property is found in a man's house, it is a question of fact for the Court whether it was there with his knowledge and sanction.

Denman, pp. 518, 519.

Doing any other thing with intent to defraud.—To *defraud* is to deprive by deceit, or to induce a man to act to his injury. **Denman, p. 174.**

Malingering, or feigning or producing disease, or delaying his cure.—Malingering is a more serious case of feigning disease, inplying some active deceit to produce the appearance of the disease in order to escape some military duty. The misconduct producing the disease must be intentional, and does not include the involuntary production of *delirium tremens* by intemperate habits, or of venereal disease by immoral

conduct, or refusal to undergo an operation. An operation includes vaccination or inoculation against enteric, and a man who refuses to undergo either cannot be charged under this section or under s. 27 (*e*) for disobeying a lawful command. A person, who through excessive indulgence in alcohol becomes unfit for duty, can be charged under s. 39 (*i*); and if he conceals venereal disease, under s. 39 (*h*), as there is a standing order in every Indian unit that any one suffering from such disease is to report sick immediately.

A.R.I., Vol. II., 220.

All charges for offences of a fraudulent nature, except ordinary theft, should be referred to the Judge Advocate-General's staff before trial.

A.R.I., Vol. II., 255.

Voluntarily causing hurt to himself or any other person with intent to render himself or the other person unfit for service.—Whoever causes bodily pain, disease, or infirmity to any person is said to "*cause hurt*," **I.P.C., s. 319.** The *intention* is of the essence of the offence, but if it is shown not to have been done accidentally this guilty intention may be presumed.

It must be noted that whenever medical evidence is necessary to prove a charge under either of these last two clauses, the Medical Officer, or doctor, must attend and give oral evidence, as a medical certificate or sick report is *not* admissible in evidence and would be excluded as "hearsay" as it does not come within ss. 91A, (3).

Committing or attempting to commit any offence of a cruel, indecent, or unnatural kind, or doing anything towards its commission.—Cruelty usually implies some positive act, such as beating or torturing; but there are circumstances in which cruelty can be charged against a person who has culpably failed to do what he ought to have done. Where a definite duty is imposed on a person to relieve suffering, and he fails to perform that duty in callous disregard of the dictates

of humanity, and knowing that his failure must inevitably prolong or intensify suffering, he can be held to have committed cruelty.

Offences of indecent conduct towards children and young females should be charged under s. 41, and not under this section, when tried by Court-Martial.

In cases of indecent crimes on male persons corroboration is very desirable, if not in law absolutely necessary, and the accused should not be convicted on the unsupported evidence of the other man.

Denman, p. 147.

The maximum punishment for any offence against this section is imprisonment.

Intoxication

s. 32.—There is only one offence, whether the offender was on duty or not on duty, and the charge should always be *intoxication.* If the offence was committed on duty or after being warned for duty, this fact and the nature of the duty should be stated in the particulars of the charge. Intoxication includes that induced by opium or any other drug as well as by liquor. It is a principle of law that intoxication is no excuse for a crime; but where *intention* is the essence of the offence charged, and it is proved that the accused was intoxicated when he committed the offence, that fact might reduce the seriousness of the offence or justify the Court in awarding a less punishment.

The maximum punishment is imprisonment.

Offences in relation to Persons in Custody

s. 33.—*Releasing without proper authority a State prisoner, or enemy, or person taken in arms against the State, or negligently suffering him to escape.*—The onus of showing that he had "*proper authority*" will lie on the accused (**I.E. Act, s. 105**), and it will be for the Court to take "judicial knowledge" of whether such authority was sufficient. **s. 89.** Negligence has been

defined as "omitting to do something which a reasonable man guided by the considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do."

The maximum punishment for an offence against this section is death.

s. 34.—*When in command of a guard, picquet, or patrol refusing to receive any prisoner committed to his charge.*—Any person subject to the Act may be taken into "military custody," **s. 124 (1)**; which means placing him under arrest or in confinement according to the custom of the Service. **s. 7 (14).**

Releasing without proper authority any person placed in his charge, or negligently suffering him to escape.—This offence relates to all prisoners other than those mentioned in the last section. The same notes apply to offences under this section. It will be observed that the offence can be committed by any one in charge of a prisoner, and is not confined to the commander of a guard, but would include escorts. If an escort of a non-commissioned officer and a sepoy lose the prisoner in their custody the blame will primarily rest on the non-commissioned officer unless he can prove the sepoy shared in allowing the prisoner to escape, or unless he shows he had good grounds for temporarily leaving the sepoy in charge of the prisoner.

Escaping from military custody.—A man escapes when he goes beyond the control of the person in whose custody he is placed. It may be with or without artifice, and with or without the connivance of the custodian. A sepoy in confinement, finding the door of his cell open, and walking out of the cell, is guilty of an escape; but if he is working outside and the warder or other custodian leaves him without supervision, and he goes away, this would not be an offence under this section. **O'Dowd, p. 77.**

An officer, or warrant or non-commissioned officer who breaks his arrest commits an offence against this section.

A man who has completed his term of imprisonment and is being conducted back to his unit is no longer a prisoner or in custody. If therefore he goes off either with or without the connivance of the non-commissioned officer in charge, no offence is committed either against this or the last clause of this section; though he could be charged under s. 30 and the non-commissioned officer (if consenting to his going) under s. 39 (*i*).

The maximum punishment for an offence against this section is imprisonment.

Offences in relation to Property

s. 35.—*Injuring, making away with, illtreating, or losing his horse or any anmial used in the public service.*—Unless there is some positive act of "*making away with,*" such as selling or pawning, or destruction, the charge should be "*losing.*" The value of the animal should be stated so that the Court can put the accused under stoppages for the loss.

Making away with or losing by neglect articles of his kit.—It must be stated in the charge how they were made away with, and in the absence of proof of selling, pawning, or destruction, he should be charged with "*losing by neglect.*" It is a military duty for a soldier to have his kit complete, and the fact that he is deficient of any articles is *primâ facie* evidence that they were lost by neglect, unless he can show the loss was not his fault. It must always be proved that the articles now deficient were issued to the accused and were in his possession before the date of alleged deficiency. The articles must have been issued to the accused for his personal use, and do not include those entrusted to him for custody, or those issued for the general use of a party. **O'Dowd, p. 80.** Values should be stated of all articles of Government property.

Every non-commissioned officer or man who loses a rifle, carbine, revolver, or bolt, is invariably to be tried by District Court-Martial, unless the District Commander dispenses with trial. **A.R.I., Vol. II., 225.**

Wilfully injuring any of his kit, or any property belonging to the Government, or to any military mess or institution, or person subject to military law.—The property must be of the kind mentioned in the clause or it is not an offence under this section. Injuring the private property of civilians is a civil offence which would be dealt with by the Civil Courts, or in some cases by Court-Martial under s. 41. The value of the damage done should be stated in the charge.

Making away with or defacing a medal or decoration.—It will be observed that it is not an offence to *lose* a medal.

The maximum punishment for an offence against this section is imprisonment.

Offences in relation to False Documents and Statements

s. 36.—*Making a false accusation against a person subject to military law, or in making a complaint makes a false statement affecting the character of such person.*—The accusation must be made officially and not a mere statement to a friend. A statement made by an accused in his defence *bonâ fide* for the purposes of his defence, even though false, is not an offence. It is not an offence under this section to make a complaint, even though frivolous or false, unless in so doing he asperses the character of a person subject to military law, or wilfully suppresses a material fact. A soldier who states a falsehood to an officer might be dealt with under s. 39 (*i*); and any one who continues to make the same or similar frivolous complaint might also be dealt with under that section.

The maximum punishment for any offence against this section is imprisonment.

s. 37.—*False answer on enrolment.*—This includes any false answer, but if the offence constitutes false enrolment, it should be laid under s. 30 (*c*). To prove an offence under this section the enrolment paper must be produced in evidence, and the accused identified as the person named therein. **s. 91.** The falsehood of the answers therein recorded may be proved either by the oral evidence of a witness with a *personal* knowledge of the facts, or by the production of the proper documents, with proof of the identity of the accused as the person named in them. **O'Dowd, p. 94.**

The maximum punishment is imprisonment.

Offences in relation to Courts-Martial

s. 38.—*Failing to attend as a witness or refusing to give evidence.*—Military witnesses are summoned or ordered to attend through their Commanding Officer. **s. 84 (2).** A witness is not compelled to answer certain questions or to produce documents, which are protected by "privilege." **Man., V., 91–100.**

Contempt of Court.—A Court-Martial begins to sit as soon as the members take their seats, even before they are sworn.

It must be carefully noted that the definition of a "*Court-Martial*" is a "Court-Martial held under this Act," **s. 7 (16)**; hence any of the above-named offences committed in connexion with a Court held undert he British Army Act would not constitute an offence against this section.

When duly sworn before a Court-Martial or other Military Court competent to administer an oath, knowingly making a false statement.—This is the same offence as that under the Indian Penal Code. A false statement as to the belief of the witness is within the section, and he may be guilty of the offence by stating he knows a thing which he does not know.

I.P.C., s. 191.

Illustration

Sepoy A. swears that he knows Sepoy B. was at Lucknow on a certain date, not knowing anything about it; even though B. was there, A. has given false evidence.

It will be necessary to prove—

(i) That the accused was sworn or affirmed.

(ii) That he swore as stated; this must be proved by some one who heard him give the evidence, preferably the officer who recorded the evidence; the mere production of the former Proceedings is not sufficient.

(iii) That the evidence was false. One witness is legally sufficient for this purpose.

I.E. Act, s. 134.

It will be observed that this clause includes "*any military Court competent to administer an oath,*" which would include a Court-Martial held under the British Army Act," or a Court of Inquiry held under either Act, which is authorized to administer an oath.

When a Court-Martial thinks any offence against this section has been committed, if the offender is subject to military law, the Court may report the matter to the proper military authority, and if he is subject to this Act order him into military custody. Although the Court, as such, cannot do this in the case of a person subject to the British Army Act, yet the President (if a British Officer), or Judge Advocate (if an officer), or the Superintending Officer can do so as a matter of discipline if he is senior to the offender. **A. Act, s. 45.** If the offender is not subject to military law the Court may report to the nearest Magistrate of the First Class.

r. 136.

The maximum punishment for any offence against this section is imprisonment.

A civilian witness would be summoned through the magistrate within whose jurisdiction he lives, **s. 84 (3)**; and if he makes default in attending, or is guilty of contempt of Court, he can be punished by a Civil Court.

I.P.C., ss. 174, 228.

Miscellaneous Military Offences

s. 39.—*An Officer or Warrant Officer behaving in a manner unbecoming his position.*—Offences should not be charged under this clause, which are specific offences against any other section or clause of the Act. It must be proved to the satisfaction of the Court that the conduct was unbecoming the position of an officer or warrant officer as the case may be, and they will use their military knowledge in deciding the point. The circumstances in which the conduct took place will affect the question.

Striking or illtreating a subordinate.—One sepoy striking another does not commit an offence against this clause, and if tried, the charge must be laid under s. 39 (*i*).

Carrying a weapon, when off duty, without proper authority.—The rules as to the possession of private arms are laid down in A.R.I., Vol. II., 226, and App. III.; and those as to the carrying of the kirpan by Sikhs in certain units, in A.R.I., Vol. II., 619, and App. III.

Accepting any gratification.—The word "*gratification*" is not restricted to pecuniary rewards.

I.P.C., s. 161.

Neglecting to obey any general or other orders.—Ignorance of an order is no excuse, if it is proved that the order has been published in the usual manner. Soldiers are personally responsible that they make themselves acquainted with orders and details for duty as are posted in quarters in accordance with regulations. **K.R., 488, 1290, 1675. A.R.I., Vol. II., 687.** A copy of the order must be produced by a witness on oath. Disobedience of a specific order should be charged under s. 27 (*e*). Failure to comply through forgetfulness to do something at a future date is not an offence under this clause, but should be charged under s. 39 (*i*).

Misapprehension of an order not clearly expressed would be a ground for excuse.

All gambling or acceptance of any gift from any Indian is forbidden by Regulations, and a disregard of these orders would be an offence against this section.

A.R.I., Vol. II., 206, 207.

An act or omission to the prejudice of good order and military discipline.—The conduct or neglect must be such as is clearly prejudicial to military discipline and not merely a breach of social good order. It will be for the Court to determine this from their military knowledge. The place and circumstances in which the offence was committed will affect their decision, as conduct, which, if it took place in or near a military station might be prejudicial to military discipline, would not be so considered if it took place in a remote village. An officer or soldier in civil employment cannot be tried under this section for neglect of duty in his civil capacity, but must be dealt with departmentally by the Civil Authority.

The maximum punishment for any offence against this section is imprisonment.

Attempts

S. 39A.—*Attempting to commit any offence against the Act or to cause its commission.*—An "*attempt*" to commit an offence is an act done or omitted, with intent to commit the offence, forming part of the series of acts or omissions, which would have constituted the offence if such series had not been interrupted. To constitute an attempt the act done must be immediately connected with the commission of the offence.

Denman, pp. 45, 46.

Where an "*attempt*" to commit any particular offence is made a specific offence under any preceding section of the Act, it must be charged under that section and not under this one. "*Attempts*" to commit

civil offences must be charged under s. 41 or s. 42, according to the circumstances.

The maximum punishment for an offence against this section is that provided for the actual offence attempted.

Abetment

s. 40.—*Abetting any offence against this Act.*—"*Abetting*" is defined as (1) instigating another to do the thing; (2) conspiring with another to do it if any illegal act or omission towards its commission takes place; (3) intentionally aiding in its commission.

I.P.C., s. 107.

The offence abetted must be one against this Act, thus an Indian soldier, abetting a British soldier to commit an offence against the British Army Act, would not be guilty of an offence against this section, though he might be charged under s. 39 (*i*).

The maximum punishment for an offence against this section is that provided for the actual offence abetted.

Civil Offences

s. 41.—Any civil offence is an offence against military law, and can be tried by Court-Martial if committed, either—

(i) Beyond British India; or
(ii) On active service in British India.

The term "British India" has been defined as "All territories and places within His Majesty's dominions, which are for the time being governed by His Majesty, through the Governor-General of India, or through any Governor or other subordinate to the Governor-General of India." **Gen. Cl. Act, s. 3.** For places held to be *in* or *out* of British India, *vide* the Table in the Manual, p. 133.

The maximum punishment for any offence against this section is—

(*a*) If the offence is punishable under the civil law by death or transportation, any punishment (other than whipping) assigned for the offence by the civil law.

(*b*) For any other offence, any punishment (other than whipping) assigned for it by the civil law, or the punishment which could be awarded for a conviction under s. 39 (*i*);

or, in either case, if the offence took place on active service and the offender is below the rank of warrant officer, field punishment. **s. 45.**

And in either case, in addition to or in lieu of any of the aforesaid punishments, to any of the punishments specified in s. 47.

As to the punishments which can be given for civil offences, under the Indian Penal Code, *vide* the Table in the Manual, pp. 74–88.

s. 42.—The commission, or attempt to commit, or abetting the commission, of the offences against the sections of Indian Penal Code mentioned in this section, *against any person subject to military law*, is an offence against military law, and can be tried by Court-Martial under this section in or out of British India at any time. These offences are—

(i) Those mentioned in Chapter VI. of the Code: *i.e.* Offences against the State.

(ii) *Murder;* which is defined as culpable homicide, if the act by which the death is caused is done with the intention of causing death, unless the offender does the act: (1) whilst deprived of self control by grave and sudden provocation; (2) in good faith *se defendendo;* or (3) acting as a public servant, in good faith, **I.P.C., s. 300.**

(iii) *Culpable homicide;* which is defined as causing death by an act with the intention of causing death, or a bodily injury likely to cause death, or with the knowledge that such act is likely to cause death. **I.P.C., s. 299.**

(iv) Those mentioned in sections 323 to 335 of the Code, *i.e.* causing hurt, etc.

(v) *Criminal intimidation.* **I.P.C., s. 506.**

The maximum punishment for any offence against this section is that assigned for the offence under the Code.

When a person subject to the Act commits a serious offence against the ordinary criminal law, he should be handed over to civil authority to be dealt with. Where the offence is triable by either a Criminal Court or a Court-Martial, the prescribed military authority has power to decide which tribunal should deal with it. **s. 69.** When a Criminal Court has jurisdiction and considers the offences should be tried by itself, the Court may, in writing, either require the prescribed military authority to hand over the offender to the nearest magistrate or postpone proceedings pending a reference to the Governor-General in Council. **s. 70.** The "*prescribed military authority*" in any case is the Officer Commanding the Army, Army Corps. Division or Independent Brigade in which the accused is serving; or in addition, where death has not resulted, the Officer Commanding the Brigade or station. **r. 164.**

If the offender is in military custody, the Officer Commanding the unit will refer the case for the decision of the "prescribed military authority," as above defined; if the offender is in civil custody, this will be done by the magistrate. Civil offences which are also specific offences against this Act should usually be tried by Court-Martial, unless in a case of theft of government property in which civilians are implicated, when it may be expedient to try the case by a Civil Court. Offences against the person or property of a civilian cannot, as a rule, be tried by Court-Martial.

When Indian soldiers—*i.e.* regimental non-commissioned officers and privates and regimental reservists —are charged with criminal offences in a Civil Court, the Brigade Commander should consult with the magistrate as to the selection of a counsel for the man's defence, but he will only appoint one where he thinks it necessary.

A.R.I., Vol. II., 251, App. IX.

CHAPTER IV

ARREST AND INVESTIGATION

Arrest and Confinement

Any person subject to the Act who is charged with an offence may be placed in military custody, by the order of any superior officer. **s. 124.** "Military custody" means the arrest or confinement of the person according to the usages of the Service. **s. 7 (14).** The rules regulating arrest in King's Regulations are followed in the case of offenders under this Act. **A.R.I., Vol. II., Preface; M.I.M.L., III., 1.** These rules are as follows:—

Officers, warrant, and non-commissioned officers are usually placed in arrest, while those below these ranks are confined under charge of a guard or picquet, etc. **K.R., 523.** If the offence is a minor one it can be investigated without the accused being taken into custody.

Arrest may be either close or open; when not specified it means close arrest. When under close arrest, the offender must not leave his quarters, except to take exercise under supervision; if in open arrest he may take exercise within defined limits. He may not, however, use his own or any other mess, or appear at any place of public resort. He must always appear in uniform, but without his sash, sword, belts, or spurs. **K.R., 524, 525.**

A person below the rank of non-commissioned officer when charged with a serious offence will be placed in confinement, usually in the guard detention room.

The superior ordering him into confinement will do so without altercation, and will avoid coming into personal contact with him, but will obtain the assistance of one or more sepoys to escort him to the guard detention room. **K.R., 529, 533.** The commander of a guard, or picquet, cannot refuse to receive any one committed to his custody. **s. 34 (*a*).**

An offender in arrest or confinement is not to be required to perform any duty beyond handing over any cash, stores, or accounts for which he is responsible; and he is not to bear arms except by order of his Commanding Officer on the line of march or in case of an emergency. If, however, he has been ordered to do any duty, he is not thereby absolved from liability for his offence. **K.R., 538; M.I.M.L., III., 2.**

Whenever any one deserts, his Commanding Officer will give written notice to such Civil Authorities as he considers can assist in the capture of the deserter, and any such authorities have power to apprehend him and hand him over to military custody. Any police officer has power to arrest any one he reasonably believes to be subject to the Act and travelling without authority, and bring him at once before the nearest magistrate. **s. 123.** All magistrates and police officers must also assist in the apprehension of any one charged with any offence against the Act who is within their jurisdiction, on the written application of the man's Commanding Officer. **s. 125.**

Investigation of Charges

All charges against every person in military custody must be investigated without unnecessary delay; which usually means within forty-eight hours after the committal has been reported to the Commanding Officer. Sunday, Good Friday, and Christmas Day are not included in this period. If it is impracticable to hold the investigation within this time, the Commanding Officer must report the fact and the reasons to the

officer to whom application for a Court-Martial would be made. **s. 124 (3) ; r. 14.**

A preliminary investigation is made in the presence of the accused by the Officer Commanding his squadron or company. **K.R., 540.** If the accused is not in arrest or confinement, and the offence is not one which the Commanding Officer has reserved for his own disposal, this officer can deal with it by awarding any minor punishment within his power or by dismissing it. If the accused is in arrest or confinement the case is dealt with by the Commanding Officer, unless he remits it to the squadron or company commander. **M.I.M.L., III., 4.**

The investigation before the Commanding Officer takes place in the presence of the accused, **r. 15** (A), who is marched in under arrest ; the charge is read out, and the witnesses give their evidence, not on oath ; the Commanding Officer will then ask the accused what he has to say in his defence, and hear any witnesses he wishes to call. The Officer Commanding the accused's squadron or company will produce the conduct sheet contained in his Sheet Roll, **A.R.I., Vol. II., 713 ;** and the Commanding Officer will decide how he will dispose of the case. **K.R., 541.** He will dismiss the charge, if he thinks the evidence does not disclose an offence, or if he thinks the charge ought not to be proceeded with. **r. 15** (B). If he thinks it should be proceeded with, he may—

(i) Dispose of the case summarily ;
(ii) Refer it to the proper superior military authority ;
(iii) Adjourn the case to have the evidence reduced to writing ;
(iv) If the accused is below the rank of warrant officer, order his trial by Summary Court-Martial. **r. 15** (C).

He cannot, however, order trial by Summary Court-Martial without reference to the proper superior

authority unless (*a*) the offence is one he can try without such reference; or (*b*) he considers there is grave reason for immediate trial, and reference cannot be made without detriment to discipline.

s. 74 ; r. 15 (C).

If the evidence has been reduced to writing, it will be reconsidered by the Commanding Officer, who may then—

(i) Remand the accused for trial by Court-Martial;

(ii) Refer the case to the proper superior military authority;

(iii) If he thinks it desirable, rehear the case and dispose of it summarily. **r. 16** (A).

There is no offence which a Commanding Officer is compelled to remand for Court-Martial, so that he has full discretion to do so or to deal with it himself.

r. 15 (C), *note*.

When a Commanding Officer has once awarded punishment for an offence he cannot afterwards increase it. The award is considered final when the accused has been marched out from his presence.

r. 17 and *note*.

CHAPTER V

SUMMARY PUNISHMENTS

Power to deal summarily with Officers and Warrant Officers

The Commander-in-Chief, subject to the control of the Governor-General, may specify what minor punishments may be summarily awarded, and the persons to whom, and by whom, these minor punishments may be awarded. **s. 20 (1).**

Under the regulations now in force officers and warrant officers may be summarily punished as under :—

(i) Officers : by an Officer having power not less than a District Commander, or authorized to convene a General Court-Martial.

(ii) Warrant Officers : by an Officer having power not less than a Brigade Commander, or an Officer authorized to confirm a Court-Martial held for the trial of a warrant officer.

The punishments which may be awarded to either are :—

(i) Forfeiture of seniority for a period not exceeding twelve months ;

(ii) Severe reprimand ;

(iii) Reprimand.

If it is proposed to award forfeiture of seniority, the accused must be asked if he wishes to be dealt with summarily or tried by Court-Martial ; and if he elects trial, he must not be punished summarily.

A.R.I., Vol. II., 233.

Powers of Commanding Officer

The term "*Commanding Officer*," means the British Officer whose duty it is by regulation, or the custom of the Service, to discharge the duties of a Commanding Officer in regard to the matters referred to. **s. 7 (6).** For the purpose of awarding minor punishments the following British Officers are "*Commanding Officers*":—

(i) The Officer Commanding a Corps as defined in Rule 161 (c), or a detachment of such Corps, or of any other body that is a Corps under Rule 161 (a).

(ii) The Officer Commanding any Department as defined in s. 7 (11), or a detachment of such Department; if authorized by the Commander-in-Chief.

(iii) The Officer Commanding a mixed Detachment as regards any portion of that detachment which has not a British Officer in immediate command.

(iv) The Medical Officer Commanding a Hospital or other medical unit is for the time being the Commanding Officer of a person subject to the Act, who is a patient or employed in the Hospital or medical unit.

A.R.I., Vol. II., 232.

A Commanding Officer, when dealing with a case summarily, may award the following minor punishments :—

(A) *In the case of Ranks below Non-Commissioned Officer*

(i) *Imprisonment* (*rigorous or simple*), and with or without solitary confinement not exceeding 7 days, to the following extent :—

(*a*) 28 days; if C.O. not below Field Officer; or C.O. of Depôt not below Captain.

(*b*) 14 days; if C.O. of Depôt of rank of Lieutenant.

(*c*) 7 days; any other C.O. (unless specially authorized by name by District Commander to award up to 28 days).

Imprisonment commences from the date of award and ends at sunset on the day it expires. Simple imprisonment must be carried out in military custody, **s. 105**; and the prisoner will be confined in the quarter guard or cells of an Indian unit at the station. **A.R.I., Vol. II., 236.** It carries with it punishment drill for two hours daily. Imprisonment should be reserved for serious or repeated offences.

(ii) *Confinement to the Lines* up to 28 days. An award of more than 14 days carries with it punishment drill for 14 days; in other cases for every day of award. Punishment drill is for combatants only, and consists in marching in quick time in marching order, for not more than one hour at a time, or two hours daily. Defaulters will attend all parades and take all duties in turn, and may be employed on working parties. They must not quit the lines, except on duty, and will answer their names at uncertain hours.

(iii) *Extra guards or picquets;* only to be awarded for minor offences on these duties.

(iv) *Deprivation of working pay.*—The C.O. under whom he is employed may deprive the offender of engineer, artificer, or working pay, for misconduct, negligence, or inefficiency, for the whole or part of each day the offence is committed, or may disrate him temporarily or for inefficiency permanently. The O.C. a detachment cannot disrate permanently.

(v) *Forfeiture of one rate of good conduct pay or good service pay.*—This may be in addition to any other punishment.

(vi) *Penal deduction.*—Any sum required to make good any loss, damage, or destruction caused by an offence, as authorized by s. 50 (*f*).

(vii) *Field punishment* up to 28 days; on active service only.

Imprisonment, confinement to lines, and extra guards and picquets may be awarded conjointly; but the imprisonment must be carried out before the confinement to lines, and no award, or consecutive awards of imprisonment and confinement to lines shall exceed 28 consecutive days.

A private soldier may be *admonished*, but is not to br *reprimanded.* **s. 20 ; A.R.I., Vol. II., 233.**

In dealing with non-combatants the following punishments can also be awarded :—

(i) *Extra duties or working parties*; according to their status or occupation.

(ii) *Fine*—

(*a*) To the extent of 7 days' pay in a month.

(*b*) To the extent of 4 days' pay in a month, by a Departmental Officer.

s. 20 ; A.R.I., Vol. II., 233.

On active service, in camp, on the march, or at specified frontier posts the Officer Commanding a Corps or Detachment may punish an Indian follower :—

(*a*) If not a menial servant, with *imprisonment* up to 30 days, or *fine* up to Rs. 50.

(*b*) If a menial servant, with *imprisonment* up to 7 days, or on active service *corporal punishment* not exceeding 12 strokes of a rattan.

s. 22.

(B) *In the Case of Warrant and Non-commissioned Officers*

(i) *Extra guards and picquets.*
(ii) *Deprivation of acting or lance rank or an appointment.*
(iii) *Deprivation of working pay, etc.*, as in the case of private soldiers.
(iv) *Forfeiture of good service and good conduct pay,* as in the case of private soldiers.
(v) *Reprimand,* or *Severe Reprimand,* or *Admonition.*
(vi) *Penal deductions,* as in the case of private soldiers.

ss. 19 (2), 20 ; A.R.I., Vol. II., 233.

The Commander-in-Chief, or the Officer Commanding an Army, Army Corps, Division, or Brigade, or on active service the Officer Commanding in the Field, can reduce any non-commissioned officer serving under him to a lower grade or to the ranks.

s. 19 (1) ; r. 162.

When a warrant or non-commissioned officer is convicted by the Civil Power the case is to be reported to the Brigade Commander, who will decide whether dismissal, discharge, or reduction is desirable.

A.R.I., Vol. II., 218.

A warrant or non-commissioned officer reduced to a lower rank or grade will take precedence in such lower rank or grade from the date of signing the original sentence of the Court-Martial or order.

A.R.I., Vol. II., 230.

Powers of other Officers

If authorized by the Commanding Officer, the undermentioned officers can award the punishments specified to those to whom such punishments can be awarded.

1. A Company Commander, or Adjutant: Confinement to the lines up to 10 days.
2. Any other British Officer: Confinement to the lines up to 7 days.
3. An Indian Officer Commanding a Detachment—
   (i) Imprisonment (rigorous or simple), but without solitary confinement, up to 7 days.
   (ii) Confinement to the lines up to 7 days.
   (iii) Extra guards and picquets.
   (iv) Extra duties.
   (v) Field punishment up to 7 days on active service (this does not require the authorization of the Commanding Officer).
4. Other Indian Officers: Confinement to the lines up to 8 days. **s. 20 ; A.R.I., Vol. II., 233.**

No alteration in the record of a summary punishment, which has been completed (except in the case of an officer), can be made without the sanction of the Brigade Commander. Any illegal or excessive award can be expunged or reduced, and the record amended, by the order of the next superior military authority to the officer who made the award.

A.R.I., Vol. II., 234.

CHAPTER VI

PROCEEDINGS BEFORE TRIAL

Summary of Evidence

When an offender has been remanded for the evidence to be reduced to writing, a summary of evidence is taken. This is a statement in writing, in narrative form, of the evidence given by all the witnesses at the investigation before the Commanding Officer, whether for the prosecution or the defence. There is no power to compel the attendance of a civilian witness. It is taken in the presence of the accused and of the Commanding Officer or some other officer whom he details. An officer who is a material witness must not be detailed for this duty. The officer detailed should have a good knowledge of the vernacular, and would usually be the Adjutant. The accused can put any reasonable questions to the witnesses; and these questions and the answers, if material, will be recorded. The evidence of each witness is read over to him to let him correct mistakes, and the witness signs it. The accused can make any statement he likes, which will be taken down, but he cannot be required to sign it. As such statement can only be used if made voluntarily, he should be warned that he need not say anything, but that if he does it may be used against him at his trial; but the mere omission of this warning will not make his statement inadmissible in evidence if in fact it was made voluntarily. The record will be in English; and if the accused or a witness does not understand English, the evidence or statement will be interpreted to him. The officer should sign the

summary and add a certificate that r. 15 has been complied with.

r. 15 (D), (E), (F), (G), and *notes*; **M.I.M.L., p. 328.**

The uses of the summary of evidence are: first it is considered by the Commanding Officer, who then decides how he will deal with the case, **r. 16** (A); next it is forwarded with the application for trial to the Convening Officer, to enable him to see that there is a *primâ facie* case against the accused. **rr. 15** (C), *note*, **27** (A). If he decides to try him, he sends the summary to the Senior Member of a Court of British Officers, or the Judge-Advocate, or Superintending Officer of any other Court, to give him a general idea of the case to be tried; it is laid before the Court by this officer and can be used for checking the evidence given by the witnesses. **r. 29** (D) and *notes*. If the witness at the trial denies on oath statements made in the summary, the Court cannot take any notice of this statement, but are bound by the evidence given at the trial on oath, though they may consider such contradiction a ground for discrediting the credibility of the witness. If the accused pleads "guilty," the summary is read to the Court to let them know the circumstances under which the offence took place and thus guide them in determining the sentence, it is then attached to the Proceedings to guide the Confirming Officer.

r. 44 (B).

Framing Charges

A charge is an accusation that a person subject to military law has been guilty of an offence. A charge sheet contains the whole issue or issues to be tried at one time, and may contain one or more charges. **r. 18.**

Every charge sheet must begin with the name and description of the accused, and if he does not belong to the Regular Forces an averment showing how he is subject to military law. **r. 19.** The proper forms to be used for the commencement of the charge sheet are given in the Rules. **App. II., Part I., p. 269.**

Each charge must state one offence only, and is divided into two parts :—

(1) The statement of the *offence.*

(2) The statement of the *particulars.*

The statement of the *offence*, if not a civil offence, must be in the words of the Act, and if a civil offence, in such words, not necessarily technical, as will sufficiently describe the offence, and express the essence of the offence. **r. 20** (A), (B), (C). The forms for the statement of the offence are given in the Rules, App. II., Part II., pp. 270–292. The following rules as to the use of these forms should be observed.

M.I.M.L., pp. 283, 284.

Where two or more words or expressions are bracketed together, the particular word or expression which most accurately describes the offence must be used.

para. (5).

Illustration

s. 27 (*d*).—

Using / Attempting to use / Committing an assault on } criminal force to } his superior officer { knowing / having reason / to believe } him to be such

Here the expression "using" or "attempting to use" criminal force, or "committing an assault on" must be selected according as the accused actually used criminal force, or attempted to do so, or whether he only committed an assault; and again the expression "knowing," or "having reason to believe" must be used according to whether the accused did actually know the other was his superior or had "reason to believe" such to be the case.

The word "and" may be used to join two or more such words or expressions; but the charge must never be in the alternative, so that the word "or" must never be used to couple such words or expressions

para. (7).

Illustration

s. 31 (*a*).—Dishonestly misappropriating arms *and* ammunition, the property of Government, is a *good* charge.

s. 31 (*b*).—Dishonestly receiving provisions *or* forage, the property of Government, is a *bad* charge.

Where words are shown in italics in square brackets, these words are the general words used in the Act, and it will be necessary to substitute for them the actual words describing the order, place, property, etc.

para. (9),

Illustration

s. 25 (*j*).—In time of war, breaking into { a house / [*other place*] } for plunder.

Here, if the building broken into were a shop or warehouse, these words must be substituted for "*other place.*"

The statement of the *particulars* need not be in any prescribed form, but must state such circumstances concerning the offence as will enable the accused to know what the particular crime consists of with which he is charged. **r. 20** (D). All the ingredients necessary to constitute the offence must be stated. If the place is material it must be stated, otherwise a general description will suffice, and sometimes the words "near" or "between" may be used. Similarly the date should always be given, and if the exact date is not known, it may be described as "on or about"; but if the exact place, or date, or time are of the essence of the offence, or where the defence is an *alibi*, these particulars must be accurately stated. Sometimes the particulars of one charge may refer to that of another; *e.g.* "at the place and on the date mentioned in the first charge."

r. 20 (E) ; **M.I.M.L., pp. 284, 285, paras. (12)–(18).**

Whenever the offence has caused any loss or damage, for which it is desired that the Court shall sentence the accused to stoppages, the particulars and the amount of such loss or damage must be averred in the particulars of the charge, and of course proved in evidence. **r. 20** (F) ; **M.I.M.L., p. 285, paras. (19), (20).** If there is any discrepancy between the amount charged and proved, the Court can only award stoppages for the smaller sum.

When it is doubtful whether the offence proved by the evidence is more accurately described by one word or expression or another, alternative charges may be framed, each charge containing one of the expressions which appear capable of being proved.

M.I.M.L., p. 284, para. (6).

Separate charge sheets are used to prevent the embarrassment to the Court or accused which might arise by trying several charges at the same time, especially if the facts are very complicated, or if the offences took place at different times, or if quite different sets of witnesses are required to prove the various charges. In practice, therefore, repeated instances of the same kind of offence may be included in one charge sheet, but offences of different descriptions should be put in separate charge sheets unless they form part of one wrongful transaction, or are very simple cases. **r. 68** (A), *note.*

The charge sheet must be signed by the actual Commanding Officer of the accused, and not by the Adjutant or any other officer "*for* him." The section of the Act under which each charge is framed should be entered in the margin against each charge, in red ink. **M.I.M.L., p. 327 (2)** (*e*), (*g*).

For an illustration of a complete charge sheet, *vide* Rules, App. II., p. 283.

When an offender has been remanded for trial by Court-Martial, the Commanding Officer must without unnecessary delay either assemble a Summary Court-Martial (after reference, when necessary, to superior authority, **s. 74**), or apply to superior military authority to convene such Court as the case requires. This delay should not ordinarily exceed thirty-six hours. **r. 16** (B) and *note.*

Duties of Convening Officer

Before convening a General or District Court-Martial, the Convening Officer should satisfy himself that the charge discloses an offence against the Act, and that the evidence in the summary justifies a trial, and that the Court he proposes to assemble has jurisdiction to try the accused. **r. 27** (A), (B). If the charges are of a fraudulent nature (except ordinary theft), or if

any doubt or difficulty arises, he should refer to the Judge-Advocate-General's Staff of the Command before trial. **A.R.I., Vol. II., 255.**

He may convene either a General or District Court-Martial, if he has a warrant enabling him to do so, or he may refer the case to superior military authority, or send it back to the Commanding Officer telling him to dispose of it summarily, or in the case of an officer, or warrant officer, dispose of it summarily himself, if he has power to do so.

K.R., 609 ; A.R.I., Vol. II., 245.

He must issue the necessary order convening the Court (for Form of Order *vide* Rules, App. III., p. 302) ; he must see that this order is free from erasures ; he details not less than the legal minimum of officers required as members and such waiting members as he considers necessary, either appointing them by name or detailing the ranks and units ; if a Judge-Advocate or Superintending Officer is necessary, he must appoint one, and may also detail an Interpreter if he thinks one is required. He is responsible that a duly qualified officer is detailed as prosecutor, and may appoint him if he thinks fit ; but in practice the Adjutant of the accused's unit usually prosecutes. He must be careful that any necessary certificates are entered in the Order.

r. 27 (c) **; M.I.M.L., pp. 302, 328, para. (5)** (*b*).

He is responsible that proper steps have been taken to procure the attendance of the witnesses required by the prosecution or defence, whose attendance can reasonably be procured, provided that the person requiring the witness may be called on to undertake to pay the costs. **r. 123** (A).

Defence

The accused must be given proper opportunity for preparing his defence, and must be allowed free communication with his witnesses or any friend or legal adviser he may wish to consult. **r. 22.** If the case

is complicated, he should be given a copy of the summary of evidence. **r. 16** (C) *note*. He must be warned for trial by an officer, a reasonable time before arraignment, the interval being sufficient to allow him to have his witnesses present and consider his defence. The officer will give him a copy of the charge sheet and a translation of it in the vernacular, and if necessary read and explain it to him. If he has not had a copy of the summary of evidence, he will be told the names of the witnesses for the prosecution, and he will be asked if he wishes any witnesses summoned for the defence. **rr. 23** and *notes*, **123** (A). He is not bound to give the names of his witnesses, but in this case the responsibility for procuring their attendance will rest on him. **r. 122.** If he asks for it, a list of the members and waiting members to form the Court will be given him, except in the case of a Summary Court-Martial; in the case of a General Court-Martial this list should always be given. **r. 23** (C), and *note*. If he is to be jointly tried, he must be warned, to give him an opportunity of claiming separate trial. **r. 24.** If it is intended to employ Counsel for the prosecution notice must be given to the accused at least seven days before trial, unless he has given notice of his intention to employ Counsel. **r. 83** (B). If a Judge-Advocate has been appointed he can obtain his opinion on any question of law relating to the case. **r. 91** (A).

If the Convening Officer or the Senior Officer on the spot considers that military exigencies or the requirements of discipline make it impossible or inexpedient to observe the rules as to taking a summary of evidence, or for the defence of the accused, or warning him for trial, this officer may make an order *under his hand* specifying the nature of such exigencies and dispensing with any or all of these rules. But the accused must be given full opportunity for making his defence and such facilities as the exigencies allow. This order must be signed *personally* by the officer making it.

r. 25.

CHAPTER VII

COURTS-MARTIAL

THE Indian Army Act provides for four kinds of Courts-Martial, *viz.* :—

(1) The General Court-Martial.
(2) The District Court-Martial.
(3) The Summary General Court-Martial.
(4) The Summary Court-Martial.

(A) GENERAL COURT-MARTIAL

Convening Authority.—The Commander-in-Chief, or any Officer empowered by warrant from the Commander-in-Chief. **s. 54.** These warrants are issued :—

In India—to Officers Commanding Commands and Districts.

In Colonial Garrisons, where Indian troops are stationed—to Officers Commanding.

For form of warrant, *vide* M.I.M.L., p. 521.

Legal Minimum.—Seven; unless the Convening Officer certifies in the convening order that, having due regard to the public service, seven are not available, then five. This certificate must be in the convening order; no subsequent one will legalize a Court of less than seven members. **ss. 57, 59.** A Court composed of seven members can carry on with reduced numbers, provided there are still five. **s. 65 (1).**

Composition.—The members may be all British, or all Indian Officers, at the discretion of the Convening Officer; but cannot be mixed. The accused can always claim that they be all British Officers.

ss. 60, 61.

Corps of Members.—They should, as far as possible, belong to different Corps or Departments; and in no case shall they all belong to the same Corps or Department as the accused. **r. 30.**

Rank of President.—The Senior Officer presides; no rank is laid down in the Act, but the regulations prescribe that if possible he should be a Field Officer in the case of British Officers, or a Subadar or higher rank in the case of Indian Officers.

s. 77; A.R.I., Vol. II., 254.

Judge-Advocate.—Either an officer of the Judge-Advocate-General's Department, or if no such officer is available, a fit person appointed by the Convening Officer. **s. 78; A.R.I., Vol. II., 258.**

Jurisdiction.—Any person subject to the Act.

s. 72.

Powers of punishment.—Death, or any less punishment authorized by the Act. **s. 72.**

Confirming Authority.—The Commander-in-Chief, or any officer empowered by Warrant from the Commander-in-Chief. **s. 95.** These warrants may have any restrictions or reservations, **s. 56**; and those issued to Officers Commanding Commands and Districts in India do not authorize them to confirm sentences of death, transportation, imprisonment, or dismissal in the case of an officer, which must be referred to the Commander-in-Chief. **M.I.M.L., p. 521.**

(B) District Court-Martial

Convening Authority.—An officer having power to convene a General Court-Martial, or an officer empowered by warrant from such officer. **s. 55.** These warrants are issued by District Commanders to Officers Commanding Brigades and Stations in their Districts. For forms of warrants, *vide* M.I.M.L., pp. 522–524.

Legal Minimum.—Three, **s. 58**; but in complicated cases, five, if possible. **A.R.I., Vol. II., 254.**

Composition.—As for a General Court-Martial.
ss. 60, 61.

Corps of Members.—No restriction; but, if possible, should not all belong to the same Corps as accused.
r. 30, *note.*

Rank of President.—As for a General Court-Martial.
s. 77; A.R.I., Vol. II., 254.

Judge-Advocate.—Not necessary; but one *may* be appointed under the same rules as for a General Court-Martial. **s. 78; A.R.I., Vol. II., 258.**

Superintending Officer.—A British Officer, of not less than four years' service, in cases where the Court is composed of Indian Officers, and there is no Judge-Advocate. **s. 79.**

Jurisdiction.—Every person subject to the Act, except officers or civilians subject as officers.
ss. 3 (1), 73.

Powers of Punishment.—Imprisonment not exceeding two years or any less punishment; except that field punishment cannot be awarded to a warrant officer.
ss. 45, 73.

Confirming Authority.—An officer having power to confirm a General Court Martial; or an officer empowered by warrant from such officer. **s. 96.** These warrants may have any restrictions or reservations, **s. 56**; and those issued to Officers, not below the rank of Field Officer, Commanding at important stations, do not authorize them to confirm Courts held for the trial of a warrant officer. The warrants issued to Officers Commanding at small stations give no power of confirmation. **M.I.M.L., pp. 523, 524.**

(C) Summary General Court-Martial

Convening Authority.—An officer empowered by order of the Governor-General or Commander-in-Chief; or *on active service,* the Officer Commanding the

Forces in the Field; or any officer empowered by him; or the Officer Commanding a detached portion of troops, if he is of opinion that owing to the exigencies of the Service it is not practicable to try the offence by a General Court-Martial. **s. 62.**

Legal Minimum.—Three. **s. 63.**

Composition.—May be all British or all Indian Officers, or mixed. **s. 63,** *note;* **r. 141** (B), *note.* The accused cannot claim that they be all British; as he can only claim this in respect of a General or District Court-Martial.

Rank of President.—The Senior Officer will preside, **s. 77.** The Convening Officer can appoint himself President, as r. 29 does not apply.

Superintending Officer.—As for a District Court-Martial. **s. 79.**

Jurisdiction.—Any person subject to the Act. **s. 72.**

Powers of Punishment.—Death, or any less punishment authorized by the Act. **s. 72.**

Confirming Authority.—The Convening Officer or any superior authority. Confirmation is only required in the following cases:—

(i) Trial of an officer.
(ii) Acquittal, or a sentence exceeding two years' imprisonment.
(iii) If the Convening Officer so orders.

In all other cases the sentence can be carried out forthwith, without confirmation. **s. 98.**

(D) Summary Court-Martial

Convening Authority.—The Officer Commanding any Corps or Department of Indian forces, or a detachment thereof; or the Officer Commanding any British Corps or Detachment to which Indian details are attached. **s. 64 (1).** The definition of a Corps is given in r. 161 (*o*).

The definition of a Commanding Officer is given in A.R.I., Vol. II., 282 (*vide ante*, p. 41). It is intended that Commanding Officers should exercise this power whenever this Court has jurisdiction to deal with an offence that requires a Court-Martial.

A.R.I., Vol. II., 246.

Composition.—The Commanding Officer holding the trial; but two other officers must attend. They are not sworn, and may be British or Indian. **s. 64 (2).**

Jurisdiction.—Any person, below the rank of warrant officer, under the command of the officer holding the Court. **s. 75.** Offences against certain sections of the Act, and any offence against the officer holding the Court, are not to be tried without previous reference to an officer who can convene a District Court-Martial (or on active service a Summary General Court-Martial), if such reference can be made without prejudice to discipline, or unless there are grave reasons for immediate action. **s. 74.**

Powers of Punishment.—Imprisonment not exceeding one year. **s. 76.**

Confirming Authority.—No confirmation is required. The sentence can be carried out forthwith, unless the officer holding the Court has less than five years service, in which case it cannot be executed unti approved by an Officer Commanding not less than a Corps, except on active service. **s. 101.**

CHAPTER VIII

JURISDICTION

ALL persons subject to this Act remain subject to the ordinary law of British India, and if they commit any offence against the Indian Penal Code can be dealt with under that Act. **I.P.C., ss. 2–4.** A Civil Court can try a person although he has been convicted or acquitted of the offence by Court-Martial, but in awarding punishment the Court must have regard to the military punishment he has undergone. **s. 71.** If he has been dealt with by a Civil Court he cannot be dealt with for the same offence by Court-Martial or by his Commanding Officer. **s. 66.** Where a civil offence is one that can be tried either by Court-Martial under ss. 41 or 42, or by a Civil Court, the rules as to which Court should dispose of the case have already been explained (*vide ante*, p. 34). Although a person convicted by a Civil Court cannot afterwards be punished again by a military tribunal, such conviction is in the case of an officer, warrant, or non-commissioned officer reported to superior authority, **A.R.I., Vol. II., 218**; as the first-named can be dismissed by the Commander-in-Chief, **s. 13**; and the warrant officer by an officer not below the rank of an Officer Commanding a Brigade, **s. 14**; and these last-named officers can dismiss the non-commissioned officer or reduce him to the ranks, **ss. 14, 19 (1).** An acting non-commissioned officer can be reverted by his Commanding Officer. **s. 19 (2).**

A person who has been convicted or acquitted by Court-Martial, or has been summarily dealt with by

his Commanding Officer, cannot be tried again or summarily dealt with again for the same offence. **s. 66.** Where, however, the first Court was illegally constituted, or the proceedings have not been confirmed, there has been no trial, and the accused can be tried again. If a new trial is ordered, no officers who served on the former Court should be detailed as members of the new Court. **r. 29** (B), *note.*

The jurisdiction of Courts-Martial is not local, and an offender can be dealt with for an offence anywhere, no matter where it was committed. **s. 68.** Where troops subject to this Act are serving out of India the Governor-General may prescribe the officers to exercise the powers given by the Act to various officers. The Officers Commanding at Colonial Stations where Indian troops are serving have been so prescribed in the Rules. **s. 6 ; r. 160.**

No one can be tried by Court-Martial for any offence, which was committed more than three years before the commencement of the trial, except an offence of mutiny, desertion, or fraudulent enrolment ; and an offence of desertion, not on active service, or of fraudulent enrolment cannot be tried if the offender has subsequently served continuously in an exemplary manner for three years. **s. 67.** Serving in an exemplary manner means without a red-ink entry in his defaulter sheet. **A.R.I., Vol. II., 247, 713.**

It is not likely that troops of the Indian Army would be embarked on board any of His Majesty's ships in commission ; but if such were the case, they would come under the Naval Discipline Act, and no Court-Martial under the Indian Army Act could be held on board such ship. **29 & 30 Vict., c. 109, s. 88.**

Indian troops on board a transport would still be under the Indian Army Act ; and the General Officer Commanding at the port of embarkation can issue his warrant to the Officer Commanding the troops on board, giving him power to convene and confirm

District Courts-Martial held on board ship. **ss. 55, 96,** *notes*. On active service, the Officer Commanding the troops on board could convene and confirm a Summary General Court-Martial without any warrant.

s. 62 (C).

Where any person has been so tried on board ship, the sentence, so far as it has not been confirmed and executed on board, can be confirmed and executed at the port of disembarkation. **s. 99** (A).

It has been ruled by the Judge-Advocate-General that a ship of the Royal Indian Marine is not a "ship commissioned by His Majesty," therefore a Court-Martial under the Act can be legally held on board one of these ships.

CHAPTER IX

COURT-MARTIAL PROCEDURE

THE forms for the proceedings of all Courts-Martial are prescribed in the Rules, Third Appendix, pp. 303–326. These are printed as Army Forms: I.A.F., D-906 for a General or District Court-Martial; I.A.F., D-907 for a Summary Court-Martial; and I.A.F., F-956 for a Summary General Court-Martial. The record must be in English, **rr. 78** (A), **92.** It should be free from corrections, all such must be initialled by the officer responsible for the record; the pages should be numbered consecutively.

M.I.M.L., p. 329, paras. (20), (21).

(A) GENERAL OR DISTRICT COURT-MARTIAL

If there is a Judge-Advocate, he is responsible for the accuracy of the record, and for the custody and transmission of the Proceedings to the proper officer for confirmation. If there is no Judge-Advocate, these duties devolve on the President, or Superintending Officer, as the case may be. **rr. 78** (A), **79. 80.** The members take their seats according to their army rank. **r. 63.** A Departmental Officer, or an officer holding rank under Art. 33A of the Pay Warrant (British) is not entitled to the presidency of a Court-Martial, **K.R., 230**; and it has been ruled that honorary rank does not entitle. The precedence of Indian officers is laid down in A.R.I., Vol. II., 146.

Duties of the Officer conducting the Proceedings

If the Court is composed of British Officers, the President will conduct the proceedings; if it is composed

of Indian Officers, the Judge-Advocate, if there be one, otherwise the Superintending Officer will do so. **r. 64.** The duties of this officer are: to see that the trial is properly conducted, that justice is duly administered, and that the accused has a fair trial and does not suffer any disadvantage from his ignorance of procedure, **r. 65**; to collect the votes of members, **r. 73**; to put any questions to a witness which the Court desires to ask, **r. 127** (A); to keep the record of the Proceedings and transmit them as stated above.

rr. 78 (A), **79, 80.**

Duties of President

In addition to his duties when acting as the Officer conducting the proceedings (*vide supra*), the President has the following duties to perform: to administer the oath to the members, when the Court is composed of British Officers, and there is no Judge-Advocate, **s. 82**; **r. 37,** *note;* to procure the attendance of witnesses, who have not been summoned by the Convening Officer, **s. 84 (1)**; **r. 123** (A); to give a casting vote, when the votes of members are equal, except in the case of the challenge, finding, or sentence, **s. 81 (2)**; to sign all documents attached to the Proceedings, **M.I.M.L., p. 329, para (18)**; to date and sign the Proceedings, **r. 52, 56.**

Judge-Advocate

A Judge-Advocate *must* be appointed to attend every General Court-Martial; and *may* be appointed at a District Court-Martial, though this is seldom done. If an officer of the Judge-Advocate-General's Department is not available, the Convening Officer may appoint an officer to officiate as such. **s. 78**; **A.R.I., Vol. II., 258.** He is therefore usually an officer, but he need not necessarily be subject to military law. Any person who would be disqualified from serving on

a Court-Martial cannot act as Judge-Advocate at that Court. **r. 89.** He is not a member of the Court, but merely a legal assessor to advise the Court on points of law and to act as the ministerial officer of the Court; the accused, therefore, has no right to object to him. **s. 80 (1).** If the Judge-Advocate dies, or is unable to attend, the Court must adjourn for another fit person to be appointed as Judge-Advocate by the Convening Officer, as they cannot proceed without one. **r. 90.**

In addition to his ministerial duties already stated (*vide supra*, p. 61), his powers and duties are as follows: to advise the prosecutor or accused on any point of law relating to the trial; to represent the Judge-Advocate-General; whether consulted or not, to inform the Convening Officer of any defect in the charge or the constitution of the Court; to inform the Court of any irregularities in the proceedings; to maintain an entirely impartial position, **r. 91**; at the end of the trial to sum up, unless he and the Court are agreed that this is unnecessary, **rr. 49 (A), 91 (E)**; to administer the oath to the members of the Court and all witnesses, **s. 82**; **r. 37**; to summon any witnesses required during the trial not previously summoned, **s. 84 (1)**; to sign the Proceedings, **rr. 52, 56.**

The Court are responsible for their decisions, but they should be guided by the opinion given by the Judge-Advocate, and should not overrule it except for very weighty reasons, as they would incur great risk in so doing. They may record in the Proceedings that they have decided any legal point in consequence of his opinion. **r. 91 (F)** and *note.*

Superintending Officer

A British Officer of not less than four years' service *must* be appointed at all Courts composed entirely of Indian Officers, when there is no Judge-Advocate. **s. 79.** This would in practice usually be at a District

Court-Martial, as Summary General Courts-Martial would seldom be composed entirely of Indian Officers. **r. 141** (B) *note*. As stated above, this officer conducts the proceedings, **r. 64** (B); and in so doing performs the ministerial duties assigned to the Judge-Advocate, when there is one, or to the President, when there is no Judge-Advocate, or Superintending Officer. He is not a member of the Court, the accused therefore cannot object to him. **s. 80 (1).**

Preliminary Proceedings

The time at which the Court opens is recorded in the Proceedings. **Rules, App. III., p. 303.** Once the trial has commenced the Court should sit a reasonable time every day (but not more than six or seven hours a day), unless an adjournment is necessary. **r. 70** (A), and *note*. A Court must adjourn if reduced below the legal minimum, **s. 65 (1)**; or in the absence of the Judge-Advocate, or Superintending Officer, or the accused, **rr. 70** (C), **71.** They may also adjourn if the number of officers detailed are not present when the Court assembles, **r. 28** (A); or if a commission is issued for the examination of a witness, **s. 85 (11)**; or to procure the attendance of a witness, **r. 124**; or to give the accused time to prepare his cross-examination of a witness, **r. 121.** They can also adjourn to view any place, but the whole Court must go and take the prosecutor and accused with them, as it would be an open Court. **rr. 69** (B), **70** (B).

The order convening the Court is read, marked with an identifying letter, signed by the President or Superintending Officer, and attached to the Proceedings. **r. 31** (A). This order must be free from alterations and must contain any certificates necessary to legalize the constitution of Court; *e.g.* if less than seven officers are detailed for a General Court-Martial, **s. 59**; **M.I.M.L., p. 328, (5) (*b*).** All documents which are to be attached to the Proceedings must be marked with a reference letter, signed by the President or Superintending

Officer, and attached at the end of the Proceedings in the order they are produced to the Court, except the charge sheet, which is inserted after the arraignment. **Man., p. 329, paras. (17), (18).** The charge sheet and summary of evidence are laid before the Court, by the President, Judge-Advocate, or Superintending Officer, to whom they have been sent by the Convening Officer.

r. 27 (D), App. III., p. 203.

The Court satisfy themselves as to their legal constitution and jurisdiction. **rr. 31, 32.**

As regards their legal constitution, they must be satisfied that :—

(i) So far as they can ascertain, the Court has been properly convened ;

(ii) The Court is not below the legal minimum, and save as mentioned in Rule 28 (*vide infra*), not less than the number detailed ;

(iii) Each of the officers is *eligible* and not *disqualified* ;

(iv) A Superintending Officer has been appointed, when necessary ;

(v) If there is a Judge-Advocate, he has been duly appointed, and is not disqualified.

If not satisfied, the Court must adjourn and report to the Convening Authority. **r. 31.**

If the order appears to be correct the Court will accept it, and it is not for them to inquire if the officer convening the Court has a warrant. **r. 31 (A)** *note.*

If the full number detailed are not available to serve, the Court should ordinarily adjourn for fresh members to be appointed, but if they consider this inexpedient they can proceed with the trial, provided they have the legal minimum. They must record their reasons for so doing. **r. 28 (A).**

An officer is *eligible* to serve on a Court-Martial if he is subject to military law ; *i.e.* to the Army Act in the case of a British Officer, or to this Act in the case of an Indian Officer. **r. 29 (A).**

An officer is *disqualified* from taking part in a particular trial, if he is—

(i) The Convening Officer.
(ii) The prosecutor.
(iii) A witness for the prosecution.
(iv) The officer who investigated the case.
(v) The officer who took the summary of evidence.
(vi) A member of a Court of Inquiry respecting matters on which the charge is founded.
(vii) The Squadron or Company Commander of the accused, who made a preliminary inquiry into the case.
(viii) The Commanding Officer of the accused or of the corps to which he belongs.
(ix) Personally interested in the case. **r. 29** (B).

Illustration

Sepoy A. is in arrest on a charge of using criminal force against Havildar B., whom he has injured so severely that a Court of Inquiry is held to inquire into the case. Lieutenant C. is a member of this Court. Captain C., his company commander, makes a preliminary inquiry into the charge against Sepoy A., who is brought up at Orderly Room before Major E., in the absence of Lieut.-Colonel F., Commanding the Regiment, and is remanded for trial by a District Court-Martial. Lieutenant G. takes the summary of evidence. Each of these officers is disqualified from serving on the Court.

Although they may be legally eligible to serve, officers should not be detailed as members until they have the necessary experience. An officer who has the smallest personal interest in the case, especially of a financial nature, is disqualified. If a fresh trial has been ordered, no officer who sat on the previous trial should be a member of the new Court. **r. 19** *notes.*

As regards their jurisdiction, they must be satisfied that—

(i) The accused appears to be subject to military law, and to their jurisdiction;
(ii) Each charge discloses an offence against the Act, and is properly framed and sufficiently explicit to show the accused what he is charged with. **r. 32** (A).

If the Court are not satisfied on any of the foregoing points, they must adjourn and report to the Convening Officer. **rr. 31** (C), **32** (B).

Prosecutor

The prosecutor now takes his place and his name is recorded in the Proceedings. **Rules, App. III., p. 303.** He must be a person subject to military law, and is usually the Adjutant of the accused's regiment. The Convening Officer is responsible that a qualified officer is appointed. **r. 33** and *note*. It is his duty to assist the Court in administering justice, and to put the whole case fairly before the Court, and he must not suppress any evidence in favour of the accused. The Court must stop him if he introduces any irrelevant matter or if he shows any want of fairness or moderation. **r. 66.** The accused cannot object to him as he is not a member of the Court. **s. 80** (1) ; **r. 34.** He may make an opening address; he examines the witnesses for the prosecution; if necessary he may give evidence himself, but he must be sworn like any other witness. Except to produce documents, he should not, except on active service, give evidence himself unless to prove a date or some other formal matter. **r. 46** and *notes*. This does not apply when Counsel appears for the prosecution. **r. 83** (D). If the accused calls no witnesses in his defence, the prosecutor can make a second address summing up the evidence for the prosecution, and if the accused calls witnesses to character, he can prove former convictions; if the accused calls witnesses, he can cross-examine them, and make a second address in reply to the defence. **rr. 47** (A), (D), **48** (E).

The accused is now brought into Court and all the rest of the proceedings, except when the Court is closed, must be in the presence of the accused in open Court. When the Court is closed no one may be present except the members, the Judge-Advocate, the Superintending Officer, any officers under instruction

and the Interpreter, if the Court think his presence necessary. **r. 69.**

Counsel

Both the prosecutor and the accused may have Counsel to assist him, if the Commander-in-Chief or Convening Officer has sanctioned it. **r. 82** (A). The accused must give seven days' notice of his intention to employ Counsel, and if the Convening Officer sanctions the employment of Counsel for the prosecution, seven days' notice must be given to the accused. **r. 83** (A), (B). A "Counsel" is considered properly qualified if he is a legal practitioner with right of audience in a Court of Sessions in British India, or is recognized in any part of the King's dominions outside British India as having similar rights and duties. He cannot be objected to, if so qualified. **r. 87.** Counsel are bound by the Rules: **r. 86.** Counsel has all the rights of the party for whom he appears. **rr. 83** (C)–**85.** The accused can, instead of a Counsel, have a "friend" to assist him; and if this friend is an officer subject to military law, he has all the rights of Counsel; otherwise he can only advise the accused and suggest questions to the witnesses, but cannot himself address the Court. **r. 81.**

Challenge

The names of the President and members must now be read over to the accused, and they severally answer to their names, and he must then be asked if he objects to be tried by any of them. **s. 80 (1); r. 34.** He must state the names of all the officers he objects to, before any objection is dealt with. He cannot object to the Court collectively though he can object to every member of it separately. If more than one officer is objected to, the objection to the junior member will be disposed of first. **r. 34** and *note*. The officer objected to withdraws and takes no part in deciding the objection. **s. 80 (2).** The accused states his objection and may call witnesses in support; but they are not

sworn as the Court are not yet sworn. The Court then decide in closed Court as to whether the objection is to be allowed or not. If one-half of the members are in favour of it, it is allowed, and the officer objected to retires. If it is disallowed the accused is so informed, and the Court proceed with the trial. **s. 80 (3), (4) ; r. 34.** If there are any waiting members, they will take the place of any officers against whom an objection is allowed. If there is no waiting member available the Court will proceed as directed by Rule 28 (*vide ante*, p. 65). The accused has the same right to object to any officer detailed to fill a vacancy. **s. 80 (3) ; r. 34.** If the objection to the President is allowed, the senior member will take his place if the Court is not reduced below the legal minimum. **r. 72** (A). Whenever a Court adjourns for fresh members to be appointed the Convening Officer may convene another Court. **r. 28** (B).

The Court are now sworn, or affirmed. **s. 82.** The oath or affirmation is administered by the Judge-Advocate, or Superintending Officer (if there is one), or a person empowered by the Court to do so. If there is no Judge-Advocate at a Court composed of British Officers, the President will first administer the oath to the members, and then be sworn by a member. Indians are generally sworn by a person of their own religion, who may be a member of the Court or a person empowered under the Rule. **r. 37.** The forms of oath or affirmation taken by members, with translations into Hindustani and Pushtu, and directions as to their proper administration, are given in Rule 35 and *notes*.

If there is a Judge-Advocate, or Superintending Officer, he is then sworn, **r. 36 ;** and if any interpreter or shorthand writer is to be employed it will be convenient to swear or affirm him now, though they may be sworn at any time during the trial. Before they are sworn the accused must be informed that he can object to them as not being impartial. **r. 76.**

Officers are required to attend all Courts-Martial held for the trial of any men belonging to their unit for the first year after they join the Indian Army. **A.R.I., Vol. II., 253;** and if any such are present they are sworn to secrecy. **r. 36.**

The forms of oath or affirmation to be taken by each of the above are prescribed in Rule 36, and the directions as to the administration given in the notes to Rule 35 will apply.

The Court may be sworn or affirmed to try any number of persons then present before it, either together or separately; but *all* the accused must be present when the Court are sworn or affirmed. Each of them has the right to object to any member before the Court are sworn. If any one does so, the Court can be sworn to try the others, and his case can be left to be dealt with later. If the accused are to be tried separately, the Court will, after being sworn or affirmed, proceed with the trial of one case and take the others in succession afterwards. **r. 75.** Any number of accused, charged with an offence committed together, may be jointly tried; but this intention must be given to them when warned for trial; and any of them can claim separate trial, on the ground that the evidence of one or more of the others is material to his defence, and if the Convening Officer or the Court are satisfied that such is the case, his claim shall be allowed. **r. 24.** If they are jointly tried, each accused will make a separate plea and defence, and the Court will give a separate finding and sentence for each of them; all of which will be recorded separately in the Proceedings. **r. 75** (c) *note.*

The witnesses, other than the prosecutor, must now be ordered out of Court. **r. 125.**

Arraignment

The accused is now arraigned on each charge. That is, the charge is read and, if necessary, translated to

him and he is called on to plead to it. **r. 38.** The accused may object to any charge on the ground that it does not disclose any offence against the Act; or is not properly framed; and the Court will decide whether the objection is valid or not. **r. 39.** If there is any mistake in the name or description of the accused, the Court can amend this at any time during the trial; but they cannot make any other amendment in a charge sheet. If before they have begun to take evidence, it appears that any other amendment is necessary in the interests of justice, they must adjourn and report it to the Convening Officer, who may, if he thinks fit, make the amendment or order a new trial. If the error is not discovered before any evidence has been taken, no amendment can be made; but it can sometimes be cured by a special finding.

rr. 40, 51 (B).

Illustration

Sepoy A. is charged with the theft of Rs.10 from Sepoy B. The evidence shows that only Rs.8 were stolen. The Court can convict him of the charge, "with the exception that the sum stolen was Rs.8 and not Rs.10."

Before pleading to the charge, the accused can offer a "special plea to the general jurisdiction of the Court"; that is, that they cannot try him on any charge at all, on the ground that they are not properly constituted, or that he is not subject to their jurisdiction, either because he is not subject to military law, or to the jurisdiction of that particular Court, *e.g.* a commissioned officer arraigned before a District Court-Martial. He can call evidence in support of his plea, and the prosecutor can call evidence to rebut it. If the Court overrule the plea, they proceed with the trial; if they allow it, they adjourn and report to the Convening Officer. This finding does not require confirmation, and the Convening Officer can convene another Court. If in doubt as to the validity of the plea, the Court can adjourn and refer to the Convening Officer; or they can record a special decision and proceed with the trial, which transfers the final decision

to the Convening Officer. **r. 41.** When he pleads to each charge, the accused can plead "guilty," or "not guilty." But before recording a plea of "guilty," the officer conducting the proceedings must ascertain that the accused understands the nature of the charge, and the effect of such plea, and the difference in the procedure. It must be recorded in the Proceedings that this rule has been complied with. **Rules, App. III., p. 306.** If he refuses to plead or does not plead intelligibly, a plea of "not guilty" will be recorded. **r. 42.**

The accused can, at the same time as his general plea of "guilty" or "not guilty," offer "a plea in bar of trial" in respect of any charge, on any of the following grounds:

(i) That he has been previously convicted or acquitted of the charge by a Criminal Court, or a Court-Martial; or dealt with summarily under s. 20 or s. 22 of the Act, *i.e.* by his Commanding Officer; or in the case of an officer or warrant officer, by the officer authorized by A.R.I., Vol. II., 233.

(ii) That the offence has been pardoned or condoned by competent military authority.

(iii) That more than three years have elapsed since the commission of the offence, except on a charge of mutiny, desertion, or fraudulent enrolment. **s. 67.**

The accused can produce evidence in support of the plea and the prosecution can rebut it. If the Court allow the plea, they record their finding and report to the Convening Officer, and adjourn; if they overrule the plea, they will proceed with the trial. If this finding is not confirmed, the Court can be reassembled and will proceed with the trial. **r. 43.**

To be a bar of trial, the previous trial must have been by a legally constituted Court, for the same

offence arising out of the same set of facts, and the finding must have been confirmed.

O'Dowd, pp. 165–167.

Illustrations

Sepoy A. is convicted of "malingering." The finding and sentence are not confirmed; he can be tried again on the same charge.

Naick B. is convicted of "striking his subordinate" (Sepoy C.) and the proceedings are confirmed. Sepoy C. subsequently dies from the effects of the blow; Naick B. can be tried for "culpable homicide."

Pardon or condonation must be the deliberate act of a person having power to dispose of the offence, acting in his magisterial capacity, with a full knowledge of the facts. **O'Dowd, p. 27.**

If when called upon to plead, it appears to the Court that accused is by reason of insanity unfit to take his trial, they will take evidence as to his mental condition and, if satisfied that he is insane, will record a special finding to that effect. This finding will be signed in the usual way and transmitted for confirmation. The Confirming Officer will, after confirmation, forward the Proceedings to Army Headquarters. The accused will in the meantime be kept in military custody, pending directions from the Governor-General as to his disposal. **r. 131, App. III., p. 314.**

If the accused pleads "guilty" to some charges and "not guilty" to others in the same charge sheet, the trial will first proceed with those to which he has pleaded "not guilty." But if the charges are *alternative* charges, the Court can record a plea of "not guilty" to those to which he has not pleaded "guilty"; or they may try him on all the charges as if he had not pleaded "guilty" to any. They will do this if one of the alternative charges is more serious than the other, and it appears he has pleaded "guilty" to the less serious one to avoid the punishment for a conviction of the graver one. **r. 44** (A) and *note*.

The accused may, at any time during his trial, withdraw a plea of "not guilty" and plead "guilty"

to any charge. The Court must be satisfied he understands the effect of this plea, as stated above, and can then record the plea and proceed with the trial accordingly. **r. 45.**

If the charges are in separate charge sheets, the accused will be arraigned, and the trial will proceed separately on each charge sheet up to the finding inclusive. The trials on the different charge sheets will be in such order as the Convening Officer directs. When the Court have tried the accused on all the charge sheets, they will go on with the trial after the findings as though all the charges had been entered in one charge sheet. The Convening Officer may direct that if the accused is convicted of any charge in any charge sheet, he need not be tried on the other charge sheets. Whenever there is more than one charge in a charge sheet, the accused can claim to be tried separately on any charge or charges, on the ground that he will otherwise be embarrassed in his defence; and unless the Court think his claim unreasonable, they will arraign him and try him on such charge separately. **r. 68.**

(i) *Procedure on Plea of "Not Guilty."*

Prosecution

The prosecutor may, if he desires, make an opening address. **r. 46** (A).

All addresses by, or on behalf of, the prosecutor or the accused, or the summing up of the Judge-Advocate, may be oral or in writing, though the summing up should be in writing. **r. 130** and *note.*

When the address is not in writing it is only necessary to record so much as the Court thinks necessary, except that sufficient record of any defence made by the accused must be kept to enable the Confirming Officer to judge the reply made by him; and the Court

must record any particular matter in the address of the prosecutor or accused, which he asks to be recorded. **r. 78** (E).

The witnesses for the prosecution are then called in turn, sworn or affirmed, and examined by the prosecutor. **r. 46** (B). This is called the examination-in-chief. **I.E. Act, s. 137.** Military witnesses serving with a corps would be ordered to attend as a matter of discipline; others, either military or civilian, are summoned by an order under the hand of the Convening Officer, President, Judge-Advocate, or the Commanding Officer of the accused. **s. 84 (1); r. 123** (A). For form of summons, *vide* Rules, App. III., p. 323.

Every witness (including one producing documents) must be sworn or affirmed in the prescribed manner. **s. 83.** The form of oath or affirmation is " prescribed " in Rule 126. The evidence is recorded in a narrative form in the words used as nearly as possible, but if the prosecutor, accused, Judge-Advocate, or the Court considers it material, the question and answer will be taken down *verbatim*. **r. 78** (C). When any evidence is given in a language which any member of the Court, Judge-Advocate, Superintending Officer, prosecutor, or accused does not understand, the evidence must be interpreted to him in a language he does understand, by the interpreter, if one has been appointed, or if not, by one sworn for this purpose. **r. 77.** Any question or evidence which has been objected to may, if the prosecutor or accused requests or if the Court think fit, be recorded with the grounds of objection and their decision. Whenever any question or answer, which is recorded *verbatim*, is not in English, it must be taken down as closely as may be in English characters, with the English interpretation added. **r. 78** (D) and *note*.

During any discussion as to the evidence of a witness, the witness should be ordered out of Court. **r. 125.**

After the examination-in-chief is concluded, the witness can be cross-examined by the accused, and, if the prosecutor so desires, may be re-examined by him on matters raised by the cross-examination.

Rules, App. III., p. 308 ; I.E. Act, s. 138.

At any time before the second address of the accused, any member of the Court or the Judge-Advocate may put questions to any witness; but it will be more convenient to wait till the parties to the trial have finished their examination of the witness before doing so. **r. 128** (A) and *note*. A witness may, by the leave of the Court, be recalled at the request of either party for this purpose. **r. 129** (A). The Court can also call or recall any witness before their finding if they think it necessary for the ends of justice. **r. 129** (D). All questions are put direct to the witness by the person asking them; but the witness addresses his reply to the Court. The evidence of every witness is read to him at the end of his examination, to see that it has been recorded properly, and to give him an opportunity of correcting mistakes. It must be recorded in the Proceedings that this has been done. If the evidence has not been given in English, and the witness does not understand English, the record of the evidence must be interpreted to him in the language in which he gave it. **r. 127.** The prosecutor is not bound to call all the witnesses whose evidence is in the summary; but he should call any whom the accused desires, to give him the opportunity of cross-examining them. **r. 120.** If he or the Court wishes to call a witness, who has not given evidence in the summary, reasonable notice of such intention must be given to the accused; or the accused can have the cross-examination of this witness postponed or ask for an adjournment to prepare the cross-examination, and the Court must inform him of his right to this postponement or adjournment. **r. 121.**

Defence

At the close of the prosecution, the accused will be asked whether he intends to call any witnesses in his defence as to the facts of the case, and the course of the proceedings for the defence will vary according to whether he does or does not call such witnesses.

r. 47 (1).

(a) *The Accused calls Witnesses*

The accused can make an opening address; and the rules for the prosecutor's address apply, except that he is allowed more latitude in his remarks. **r. 48** (A). He must abstain from disrespect towards the Court or insulting remarks about others; but for his defence, he may impeach the evidence or motives of the prosecution and impute blame to others, subject to liability to answering for doing so. If his defence is irrelevant the Court can caution him. **r. 66** (C). He may then call his witnesses, including those as to character (if any). **r. 48** (B). The rules for the examination of the witnesses for the prosecution apply to those for the defence, *mutatis mutandis*. The prosecution may in special cases be permitted to call witnesses in reply. **r. 48** (C). After all the witnesses for the defence have been examined the accused can make his second address; and the prosecutor is entitled to make a second address in reply. **r. 48** (D), (E).

(b) *The Accused calls no Witnesses*

(*Except to Character*)

The prosecutor may make a second address, summing up his case. The accused can then make an address, stating his defence. He can call any witnesses as to character, who are examined in the same way as any other witnesses. **I.E. Act, s. 140.** The prosecutor can rebut this evidence, by procuring evidence of former convictions or entries in the defaulter's book, but he cannot again address the Court. **r. 47.**

If the accused is defended by Counsel, or an officer subject to military law, he may, at the close of the prosecution and before the address of his Counsel, make a statement, giving his own account of the case. This statement may be oral or written, but the accused cannot be sworn and no questions can be put to him by anybody. If he makes such a statement the procedure will be as in (a) above. **r. 88.**

If there is a Judge-Advocate, he will now sum up, unless he and the Court consider a summing-up unnecessary. After this, no other address will be allowed, and the Court will be closed to consider their finding. **rr. 49, 50** (A), **91** (E).

Finding

Each member of the Court must give his opinion separately on each charge, beginning with the junior member. **rr. 50** (B), **73** (B). A majority of the votes decides; where the votes are equal the accused is acquitted. **s. 81 (1).** If the accused is acquitted of all the charges, the President (and Judge-Advocate or Superintending Officer, if there is one) dates and signs the Proceedings, which are then transmitted for confirmation. **r. 52.**

The finding on every charge must be recorded as "guilty," "not guilty," or "not guilty and honourably acquit him of the same." Honourable acquittal should, however, only be used in respect of a charge affecting the honour of the accused of which he has been proved entirely innocent. **r. 51** (A) and *note.*

The Court also record a special finding in any of the following cases: (i) when they find the facts proved differ from the particulars of the charge, but the difference is not so material as to have prejudiced the accused in his defence; (ii) they may find him guilty with certain specified exceptions or variations; (iii) when charged with certain offences mentioned in

s. 86, they can find him guilty of the cognate offences therein mentioned; (iv) when charged with any offence the Court can find him guilty of an attempt or of an abetment of that offence; (v) when there are alternative charges, and the Court are in doubt as to which charge the facts proved constitute, they can refer to the Confirming Officer for a ruling, or they can record a special finding, stating the facts proved and find the accused guilty of whichever charge these facts in law constitute; (vi) they can find the accused was insane at the time he committed the offence.

s. 86; rr. 51, 131 (A).

Illustrations

Sepoy A. is charged with absence from 3 September to 20 September. He proves in his defence that he was arrested by the civil police on the 12th and sentenced to imprisonment which only expired on the day he returned to the lines (20th). The Court can find him guilty with the exception that the absence terminated on 12 September and not on the 20th.

Sepoy B. is charged with losing by neglect his waistbelt, frog, tunic, and two pairs of boots. He proves in his defence that he has one pair of boots and was never issued with a frog. The Court can convict him of the charge with the exception of these articles.

Sepoy C. is charged with attempting to desert. The Court can convict him of either desertion or absence without leave.

(ii) *Procedure on Plea of "Guilty"*

The Court will record a finding of "guilty." **r. 42** (B). The Court will then receive any statement with reference to the charge which the accused wishes to make. The summary of evidence will then be read, marked, and signed by the President, and attached to the Proceedings. If there is no summary, the Court will record sufficient evidence to show the circumstances of the case and enable them to determine their sentence and to guide the Confirming Officer. The accused can now make any statement in mitigation of punishment, and if the Court considers it necessary, they may allow him to call witnesses to corroborate his statements. He can also call witnesses as to character.

r. 44 (B), (C), (F).

If from his statement, or from the summary, or for any other reason it appears to the Court that the accused did not really understand the nature of the charge he has pleaded "guilty" to, or the effect of that plea, they must alter the record, and enter a plea of "not guilty" and try him on this plea.

r. 44 (D).

Proceedings on Conviction

When the accused has been convicted of any charge, the Court may take evidence of his previous character and service to guide them in determining their sentence. They should always do this if possible. This evidence is given by a witness, usually the prosecutor, handing in a summary of the entries in the regimental books as to any previous convictions by Court-Martial or a Criminal Court, any summary punishments, time he has been in confinement on any previous charge, and any decorations the Court can forfeit. The witness must have verified these statements with the regimental books and identify the accused as the person referred to. The accused can cross-examine him, and call witnesses to rebut the evidence, and can call for the production of the original records, and may address the Court on this evidence. **s. 93 ; r. 53** and *notes*.

Sentence

The Court is now closed to consider the sentence. The Court will award one sentence in respect of all the charges of which the accused has been found guilty. **r. 54.** Every member must vote on the sentence, even though he was in favour of acquittal. **r. 73** (A). The sentence must be determined by a majority of votes, except that sentence of death requires the concurrence of at least two-thirds of the members. If there is equality of votes as to the nature of the punishment to be awarded, the decision will be in favour of the accused and the less severe punishment

will be passed. **ss. 81 (1), 87.** Where opinions differ as to the *nature* of the punishment to be awarded, the most lenient punishment suggested is put round first, and unless a majority of the members are in favour of it, then the next most lenient until a majority are in favour of some punishment. When the nature of the punishment has been decided, the *quantum* (where an amount is necessary) will be similarly decided.

r. 73 *notes.*

Illustrations

A Court consists of seven members; three vote for transportation, two for imprisonment, and two for a forfeiture. The forfeiture is put round first and is lost, only two voting for it. Next the imprisonment is put forward, the two who voted for forfeiture will now vote for this rather than transportation, hence there are now four—a majority—in favour of imprisonment, which will be the punishment.

In fixing the amount two members vote for three months, two for six months, and three for a year. The three months will be voted on first and lost; then the six months, which will now secure five votes—a majority—and this will be the amount passed.

In awarding a sentence of death, the Court must direct whether the offender is to be hanged or shot.

s. 104.

In awarding a sentence of imprisonment, the Court must always state whether it is to be "rigorous" or "simple," as if they neglect to do so, the sentence will be one of "simple" imprisonment. **s. 43,** *note* (*c*). Sentences of "simple" imprisonment are inexpedient and inconvenient to carry out. A sentence of one or more years should be expressed in years; those of one month or more, in months or months and days. **r. 54,** *note.* A "month" means a calendar month.

I.P.C., s. 49.

The Court may, if they wish, make a recommendation to mercy, but they *must* give their reasons for doing so, and *may* record by how many votes such recommendation was adopted or rejected. **r. 55.**

The Proceedings will then be dated and signed by the President, and by the Judge-Advocate or Superintending Officer (if there is one), and will then be transmitted for confirmation. **r. 56.** The Proceedings

of a General Court-Martial will be submitted through the Deputy or Assistant Judge-Advocate-General of the Command to the Confirming Officer; or if that officer has acted as Judge-Advocate at the trial they will be submitted through the Judge-Advocate-General.

The Proceedings of a District Court-Martial will be sent direct to the Confirming Officer. Court-Martial Proceedings will be sent by registered post.

A.R.I., Vol. II., 256.

(B) Summary General Court-Martial

Rules 14–136 inclusive do not, except as specially mentioned, apply to a Summary General Court-Martial, the procedure for which is governed by the following rules. The order convening the Court and the record of the proceedings are in the form given in Appendix III. to the Rules (I.A.F., F-956), *vide*, p. 324–6. **r. 137.** The order convening the Court must be signed by the Convening Officer personally, and not by a staff officer for him. The charge need not be in a regular charge sheet, but may be in any words sufficient to disclose an offence against the Act. **r. 138.** The name and regiment of the accused (if known) or his description are entered in the Schedule of the Form, and the charge in the second column of the Schedule. The accused has the usual right of challenge, which is dealt with in the usual way. **r. 140.** The Court are sworn or affirmed as usual, also the Interpreter or Superintending Officer (if there is one). But the Court would rarely consist entirely of Indian officers. **r. 141** and *note*. The rules for the arraignment, plea to jurisdiction, evidence for prosecution and defence, finding and sentence are similar to those already dealt with for a General Court-Martial. The accused can have a Counsel or friend to assist him.

rr. 142–147.

The President is responsible that a brief record of the evidence and any defence made by the accused is taken, and attached to the Proceedings, unless the Convening Officer certifies that military exigencies prevent this being done. If the accused pleads "guilty" the summary of evidence may be read and attached instead of witnesses being called. **r. 146.**

If the Proceedings do not require confirmation (*vide*, s. 98) the finding and sentence are pronounced at once in open Court, and the sentence put into execution as soon as possible. If they do require confirmation they are transmitted to the Confirming Officer. **r. 148.**

(C) Summary Court-Martial

The officer holding the Court is called the Court. **r. 92.** Whenever it is necessary to interpret the evidence, or any documents, or other part of the proceedings, to the Court or the accused, an Interpreter must be appointed. If the Court knows the language it can take the Interpreter's oath or affirmation. This would usually be the case. **r. 93.** The rules as to closing the Court, or adjournments, are as for other Courts. **rr. 113, 114.**

As soon as the Court, and the two officers attending (*vide*, s. 64 (2)), and the Interpreter have assembled, the accused is brought, or if a non-commissioned officer "called," before the Court. **r. 94.** The Court and Interpreter (if any) are then sworn or affirmed, in the form prescribed in r. 95. The accused cannot object to either the Court or the Interpreter. The officers attending are not sworn. **s. 64 (2).** The Court can be sworn to try any number of accused, but they must all be present when the Court is sworn. **r. 96.**

The accused can have a Counsel, or any other person, to assist him during the trial. **r. 115.**

The accused is then arraigned on each charge in the usual way, and can object to the charge. **rr. 97, 98.** An explanatory memorandum must be attached to the Proceedings, whenever a Court tries a charge without reference, which should not ordinarily be so tried. **s. 74 ; r. 116.** The Court can amend any error in the name or description of the accused at any time, and if any other amendment appears necessary it can be made by the Court, before any evidence has been taken. If such amendment requires the sanction of a superior authority this sanction must be obtained.

s. 74 ; r. 99.

The rules as to special pleas, as to the jurisdiction of the Court, or in bar of trial, or the general plea of "guilty," or "not guilty," or separate charge sheets, are the same as those already described in the case of a General or District Court-Martial.

rr. 100, 101, 102, 112.

(i) *Procedure on Plea of "Not Guilty"*

The evidence for the prosecution is taken. As there is no prosecutor, the witnesses are examined by the Court, and can be cross-examined by the accused, and re-examined by the Court. **r. 104 ; App. III., p. 319.**

When all the evidence for the prosecution has been given, the accused can make a statement in his defence, or may reserve such address until after he has called his witnesses. He then calls his witnesses, including those to character, if any. They are examined by him, cross-examined by the Court, and re-examined by him. **r. 104 ; App. III., p. 320.**

If it is necessary the Court can call witnesses in reply to the defence. **r. 105.**

The rules for the swearing or affirmation of witnesses and the method of their examination and recording their evidence are the same as those given above in the case of General and District Courts-Martial.

The Court will then give its verdict, and record a finding on every charge in the usual way. The Court need not be closed and the finding may be pronounced at once; or the Court may be closed for discussion with the officers attending. **rr. 106** and *note*, **107, 113.** If the finding is "not guilty" on all the charges, the Court will date and sign the Proceedings, and announce the finding in open Court, and the accused will be released. **r. 108.**

(ii) *Procedure on Plea of "Guilty"*

The Procedure in this case will be as already described above in the case of a General or District Court Martial. **r. 102.**

Procedure after Finding of "Guilty"

After a finding of "guilty" on any charge, the Court may either record from its own knowledge, or take evidence in the usual way as to the general character and service, etc., of the accused, as in the case of a General or District Court-Martial. **r. 109.** The Court will then award one sentence in respect of all the charges upon which the accused has been convicted, and will then date and sign the Proceedings, recording the time at which the trial closed.

rr. 110, 111; App. III., p. 322.

CHAPTER X

CONFIRMATION AND PROMULGATION

Confirmation

The finding and sentence of all General and District Courts-Martial require confirmation by an officer empowered to confirm the proceedings of such Court. **ss. 94, 95.** Those of a Summary General Court-Martial only require such confirmation in the cases specially laid down. **s. 98.** Those of a Summary Court-Martial do not require any confirmation; but if the officer holding the trial has less than five years' service, the sentence cannot be carried out until *approved* by the prescribed officer. **s. 101.**

A member of a General or District Court Martial, or the prosecutor, cannot confirm the proceedings of such a Court at which he officiated, and where he becomes the officer who would otherwise have confirmed, he must refer them to a superior authority competent to confirm such proceedings. **r. 62.**

The minute of confirmation should be in the Confirming Officer's own handwriting. In case of non-confirmation, he may, if he likes, give his reasons for refusing to confirm. For forms of minute of confirmation, *vide* Rules, App. III., pp. 316, 317.

If the sentence has been informally expressed, he can vary it, or if the punishment is in excess of that allowed by law he can vary the sentence to bring it within the law; but he cannot thus vary a wholly illegal sentence. **r. 61.**

If the proceedings are not confirmed the accused can be tried again, but before ordering retrial, the

Confirming Officer must refer the case to the Adjutant-General for the orders of the Commander-in-Chief.

I.A.O., $\frac{443}{23}$

Revision

The finding, or sentence, or both, of any Court which requires confirmation, may be sent back for revision once by the Confirming Officer. The Court on revision must, if possible, consist of all the original members; but if any are unavoidably absent, the Court can proceed provided they have a legal minimum.

s. 100.

The Court sit in closed Court, unless the Confirming Officer has directed them to take any additional evidence, which must be taken in open Court.

s. 100 (1); r. 57 (A).

If the sentence only is sent back for revision, the Court cannot alter the finding; but if the finding is revised and such revised finding requires a sentence, the Court must pass sentence afresh, as the revocation of the finding *ipso facto* involves a revocation of the former sentence. The fresh sentence can be an increase on the old one. **r. 57** and *notes*. The Court can, if they think fit, adhere to their former finding or sentence. **App. III., p. 316.**

Remission, etc.

A Confirming Officer can, when confirming a sentence, mitigate, remit, or commute the punishment awarded; provided that a sentence of transportation cannot be commuted to one of imprisonment for a term exceeding the transportation awarded. **s. 99.**

Mitigation means awarding a less amount of the same kind of punishment and is in effect a partial remission, *e.g.* remitting one month of a sentence of six months' imprisonment.

Remission may be either of the whole or part of the sentence, as where a sentence of rigorous imprisonment with solitary confinement is wholly remitted, or the solitary confinement is remitted.

Commutation is changing the punishment to any less punishment or punishments, which the Court could have awarded, *i.e.* one lower in the scale in s. 43.

Where the sentence of a Summary Court-Martial requires approval by a Superior Authority before being carried out, the Superior Authority cannot alter the sentence, and if he considers it too severe he must direct the officer holding the Court to modify the sentence. **r. 118** *notes.*

Suspension of Sentences

Whenever a person has been sentenced to transportation or imprisonment, the Confirming Officer, when confirming the sentence, or in the case of a sentence which does not require confirmation, the Officer holding the Court, or the President when passing sentence may direct that the offender be not committed till the orders of a Superior Military Authority have been obtained. This officer may suspend the sentence, in which case the offender will be released. **I.A. (Sus. Sen.) Act, s. 3.**

If the offender has also been sentenced to dismissal, the dismissal will also be suspended.

I.A. (Sus. Sen.) Act, s. 9.

The suspended sentence will be considered by a Competent Military Authority, at intervals of not more than three months, and if the offender's conduct justifies a remission, this officer will refer the sentence to a Superior Military Authority, who can remit it. This last-named authority can at any time order that the offender be committed to undergo the unexpired portion of his sentence. **I.A. (Sus. Sen.) Act, ss. 5, 6.**

When an offender, while under a suspended sentence, is again sentenced: (i) if this sentence is also suspended, the two will run concurrently; (ii) if the new sentence is for three months or more and is not suspended, he will be committed on the unexpired part of the former sentence, and the two will run concurrently; (iii) if the new sentence is for three months or less and is not suspended he will be committed on this sentence only, the other remaining suspended.

I. A. (Sus. Sen.) Act, s. 7.

A sentence continues to run from date of signing, even though suspended. **I.A. (Sus. Sen.) Act, s. 4.**

A " Superior Military Authority " is the Commander-in-Chief, or any officer empowered to convene General, or Summary-General Courts-Martial.

A "Competent Military Authority" is a Superior Military Authority, or any officer not below the rank of Field Officer authorized by a Superior Military Authority. **I.A. (Sus. Sen.) Act, s. 2.**

Promulgation

The charge, finding, sentence, recommendation to mercy (if any), and minute of confirmation must be promulgated in such manner as the Confirming Officer directs, or if he gives no directions, then according to the custom of the Service. **r. 58.** In the case of a Summary Court-Martial, held by an officer with less than five years' service, promulgation will be deferred until the Proceedings have been approved by the prescribed officer. **s. 101; r. 118.** The above-mentioned particulars must be communicated to the accused, but a written notice of them will satisfy the requirements. After promulgation, confirmation is complete, and the powers of a Confirming Officer, *qua* Confirming Officer, cease. **s. 99** *note.*

CHAPTER XI

EXECUTION OF SENTENCES

SENTENCES of transportation are carried out in a civil prison, which is one maintained under the Prisons Act, 1894. **s. 107** and *note*. Until he is transported, the offender will be dealt with as though undergoing rigorous imprisonment. **s. 108A**. The warrant for his committal is signed by his Commanding Officer or other prescribed officer. **s. 107; r. 152.** For form of warrant *vide* Rules, App. IV., p. 330. Persons sentenced to transportation are dismissed the Service by the authority having power to do so. **s. 14,** *note*.

Sentences of rigorous imprisonment are also carried out in a civil prison; except that a sentence not exceeding three months may be carried out in military custody, if the Confirming Officer, or the Court, where no confirmation is required, so directs. This direction will be given in the minute of confirmation, or form part of the sentence, as the case may be. On active service, the Officer Commanding the forces in the field may establish military prisons in the field, in which sentences of rigorous imprisonment can be carried out. **s. 107** and *notes*. The committal warrant to a civil prison is signed by the prisoner's Commanding Officer or other prescribed officer. **s. 107; r. 152.** For form of warrant, *vide* Rules, App. IV., p. 331.

If part of the sentence is to be undergone in solitary confinement, such confinement must not exceed fourteen days at a time, with intervals between the periods of solitary confinement not less than such periods, and when the imprisonment exceeds three

months, not more than seven days' solitary confinement can be inflicted in any one month, with intervals between of not less duration than the periods of solitary confinement. **s. 110.**

When imprisonment is carried out in military custody, the prisoner will be confined in the quarter guard or cells of an Indian unit, or if there is no Indian unit, in the cells of a British unit. **A.R.I., Vol. II., 236.** Rigorous imprisonment will be carried out as follows :—

(i) Prisoners will be confined separately in the cells, if possible, if not, in the guard-room. Two prisoners are never to be confined together.

(ii) They will be employed on hard-labour tasks for spells of not more than two hours at a time, and will also undergo punishment drill for two hours daily. The total hard labour and drill will be for six or seven hours according to the season of the year.

(iii) For minor breaches of prison discipline, a Unit Commander can award a prisoner—

(*a*) Reduction of diet for not more than three days.

(*b*) Additional hard labour and drill, not exceeding two hours a day, for not more than seven days.

A.R.I., Vol. II., 237.

All sentences of transportation or imprisonment, whether suspended or not, begin to count from the date of signing the original sentence.

s. 106 ; I.A. (Sus. Sen.) Act, s. 4.

When a fine has been awarded as a Court-Martial sentence, the President of the Court can send a certified copy of the sentence to any magistrate in British India, who shall then have the fine recovered under the provisions of the Code of Criminal Procedure. This course is adopted when the fine is not recoverable under s. 50 (*g*) of this Act. **s. 111A** and *note.*

A sentence of dismissal combined with transportation or imprisonment, carried out in a civil prison, takes effect from the date the prisoner is received into a civil prison; if combined with imprisonment, carried out in military custody, or with field punishment, it does not take effect till the prisoner is released; in all other cases it takes effect from the date of promulgation, or such later date as the Commanding Officer directs. **r. 154** (A).

Provost-Marshal

A Provost-Marshal may be appointed by the Commander-in-Chief, or an Officer Commanding not less than an independent brigade, or the Officer Commanding the Forces in the field, for the prompt repression of offences and breaches of discipline committed in the field or on the march. His powers and duties are regulated by the established custom of war and rules of the Service. These duties include the arrest of all offenders, to take charge of prisoners, to carry out any sentences of Courts-Martial, and to generally maintain good discipline. He can, on active service, summarily punish any follower, who is a menial servant, caught red-handed by him or his assistants committing any breach of military discipline, by a corporal punishment not exceeding twelve strokes of a rattan. **ss. 23, 24.**

CHAPTER XII

PROCEDURE AFTER PROMULGATION

Disposal of Property

Where any property connected with an offence is produced before a Court-Martial, the Court may make an order for its custody during the trial, or if it is subject to decay, for its sale. A copy of this order may be sent to a magistrate, where such property is, who will take the same action as if the order had been made under the Code of Criminal Procedure.

At the conclusion of the trial, the Court, or the Confirming Officer, or other Superior Authority may make an order for its disposal, by destruction, confiscation, or delivery to the person claiming it. The term "property" includes any other property into, or for, which the original property may have been converted or exchanged. **ss. 126A, 126B.**

Preservation of Proceedings

After promulgation the Unit Commander makes the necessary entries (if any) in the offender's conduct sheet and Court-Martial sheet, **A.R.I., Vol. II., 712, 713;** and the Proceedings will then be transmitted to the Deputy, or Assistant Judge-Advocate-General of the Command. **A.R.I., Vol. II., 257.** The Proceedings of all Courts-Martial (other than a Summary Court-Martial) are kept in the office of the Judge-Advocate, in the case of a General Court-Martial for a period of seven years, and in the case of a District or Summary-General Court-Martial for a period of

three years. **rr. 132** (A), **150.** The Proceedings of a Summary Court-Martial are kept for three years with the records of the Corps to which the accused belonged. **r. 132** (B).

During the time the Proceedings are preserved, the accused has the right to obtain a copy of them on payment of seven annas for the first two hundred words, and three and a half annas for each subsequent two hundred, or less than two hundred, words. **r. 133.**

Loss of Proceedings

If the original Proceedings, or any part of them, are lost, any copy certified by the President, Judge-Advocate, Superintending Officer, or the officer holding the Court may be accepted in lieu; or where there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the Court can be procured, this evidence may, with the assent of the accused be accepted. The substituted copy or this evidence may be confirmed, where confirmation is required. If in a case, where confirmation is required, there is no such copy or evidence, or if the accused withholds assent, he may be tried again; and on the order convening a fresh Court being issued the proceedings of the former Court will become void. **r. 134.**

Remission, etc., after Confirmation

When a person has been convicted by Court-Martial of any offence, the undermentioned officers have power to deal with the offender as stated below.

(i) The Governor-General in Council;
(ii) The Commander-in-Chief;
(iii) The Officer Commanding the Army, Army Corps, Division, or Independent Brigade, in which the offender was serving when convicted, or within the area of whose command he is undergoing punishment;

(iv) The Officer Commanding the Forces in the Field as regards an offender convicted on active service.

The sentence must have been one the officer could have confirmed, or which did not require confirmation.

Any of the above can pardon the offender or remit the whole or any part of the punishment, either unconditionally or on conditions which the offender accepts; or he may mitigate or commute the punishment to any less punishment or punishments.

A sentence of transportation cannot be commuted into a longer term of imprisonment. If the condition on which the offender was pardoned, or had his punishment remitted, is not fulfilled, the Authority can cancel the pardon or remission and the sentence of the Court will be carried out; but as regards transportation or imprisonment, only for the unexpired portion of the sentence, *i.e.* less the period already undergone.

s. 112 and *note.*

When a sentence which has been confirmed, or which does not require confirmation, is found to be invalid, any of the above-mentioned Authorities can pass a valid sentence, provided that this must not be in excess of the punishment awarded by the invalid sentence. **s. 103.**

The Proceedings can be annulled by the Commander-in-Chief, or with the advice of the Deputy, or Assistant Judge-Advocate-General, by the Officer Commanding a District or Brigade in the case of Proceedings confirmed by him or an officer under his command. The prisoner may be released pending the reference to the Judge-Advocate-General's Department.

A.R.I., Vol. II., 261.

CHAPTER XIII

EVIDENCE

EVIDENCE includes all legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation. There is a wide difference between *evidence* and *proof*—the latter being the effect of evidence. When the result of evidence is the undoubting assent to the certainty of the proposition which is the subject-matter of the inquiry, such proposition is said to be proved. **Powell, pp. 1, 419.**

Evidence means all statements which the Court permits to be made before it by witnesses, and all documents produced for the inspection of the Court.

A fact is said to be *proved* when, the Court either believes it to exist or considers its existence so probable that a prudent man ought to act on the supposition that it exists. **I.E. Act, s. 3.**

The region of evidence lies between moral *certainty* on the one hand, as its most perfect extreme, and moral *possibility* on the other, as its most imperfect extreme. It does not look for more than the first, and it will not act on less than the last.

Powell, p. 421.

In a criminal trial the issue must be proved beyond a reasonable doubt. **Phipson, p. 5.**

Courts-Martial held under the Indian Army Act are governed by the rules of evidence laid down in the Indian Evidence Act, subject to the provisions of the Indian Army Act. **s. 88 ; I.E. Act, s. 1.**

The Indian Evidence Act deals with the subject of evidence as follows :

(i) What facts may be proved ;
(ii) What proof must be given of these facts ;
(iii) How this proof is to be produced, who may give it, and in what manner.

M.I.M.L., V., 10.

Evidence may only be given of the *facts in issue* and such others as are *relevant*, but of no others.

I.E. Act, s. 5 ; M.I.M.L., V., 4.

The " facts in issue " in a criminal trial are those on which the existence, non-existence, nature or extent of the guilt of the accused depends.

I.E. Act, s. 3 ; M.I.M.L., V., 11.

Illustration

A. is charged with the murder of B. The following facts are, or may be in issue :

(i) That B.'s death was caused by A.
(ii) That A. intended to cause B.'s death.
(iii) That A. had received sudden and grave provocation from B., which might reduce the crime to culpable homicide. I.P.C., s. 300.
(iv) That A. at the time was, by reason of unsoundness of mind, incapable of realizing the quality of his act, in which case he would not be guilty of any offence. I.P.C., s. 84.

(A) Relevancy of Facts

(i) *Relevant Facts*

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the Act. **I.E. Act, s. 3.**

Facts which form part of the same transaction, or which are the cause or effect, or which show motive or preparation for the fact in issue, or the subsequent conduct of the accused, are relevant.

I.E. Act, ss. 6–8 ; M.I.M.L., V., 15–17.

Illustration

A. is charged with the murder of B. by stabbing him with a knife after provoking a quarrel with him. The following facts would be relevant :

(i) Anything said by either of them, or the bystanders, during the quarrel.
(ii) The bloodstains on the knife.
(iii) The fact that on the previous day B. had insulted A.'s wife.
(iv) That immediately after the occurrence A. fled from home.

A complaint made shortly after the commission of the offence and the terms of the complaint are admissible; but a distinction must be made between a *complaint* and mere *statement* that an offence has occurred. The latter would not be admissible except in special cases. **M.I.M.L., V., 17, 18.**

Where any state of mind, *e.g.* intention, knowledge, negligence, etc., is an ingredient of the offence, after the commission of the principal act has been proved or admitted, evidence may be given to prove the state of mind of the accused. In a case of murder, although evidence of the accused's bloodthirsty disposition would be inadmissible, it would be relevant to prove that he had on a former occasion attempted to murder the deceased as evidence of his intention and ill-will to the latter. Or on a charge of uttering counterfeit coin, proof that he had on previous occasions uttered counterfeit coin is admissible to show that he knew the coin was bad. **I.E. Act, s. 14 ; M.I.M.L., V., 22-24.**

Facts which are inconsistent with the fact in issue, or render it highly probable or improbable are relevant, as for example an "*alibi.*"

I.E. Act, 11 ; M.I.M.L., V., 21.

(ii) *Acts of Conspirators*

In cases of conspiracy, *e.g.* mutiny, after the actual existence of a mutiny and the connexion of the accused with it, have been proved, evidence of anything done or written by another mutineer with reference to the common intention is relevant, and may be given in evidence against him; even though done or written after he ceased to be connected with the mutiny, or before he joined in it; and whether done or written with or without his knowledge.

I.E. Act, s. 10 ; M.I.M.L., V., 20.

(iii) *Circumstantial Evidence*

From the circumstances under which serious crimes are usually committed, the *direct* evidence of witnesses who actually saw the main facts in issue occur can rarely be obtained, and proof must be arrived at from *circumstantial* evidence. *Direct* evidence is that which goes straight to establish the *factum probandum*, or fact in issue. *Circumstantial* evidence (sometimes called *inairect* or *inferential* evidence) is that which establishes certain minor facts (*facta probantia*), the effect of which is to establish the fact in issue.

Powell, p. 7.

The latter is not inferior to direct evidence, and may be superior to it; for it is recognized that "facts cannot lie" though witnesses may. But it must be remembered that facts often *deceive*, and that the inference suggested by them is not always the true one. Therefore, before a Court convicts on circumstantial evidence, they should be satisfied that the facts proved are not only consistent with the guilt of the accused, but that they are inconsistent with any other rational conclusion. **M.I.M.L., V., 13.**

(iv) *Admissions and Confessions*

Admissions are statements made by a party to any proceedings, or by his agent, relative to the case, and are as a rule admissible against him, but not in his favour. In connexion with crimes, such admissions are usually confessions. **M.I.M.L., V., 26.**

As a rule a confession can only be used against the person making it; except a confession made by an accomplice, in the presence of another, is admissible so far as to show the conduct of the latter on hearing the confession if he was in any way implicated. **M.I.M.L., V., 27.** Where persons are being jointly tried for the same offence, the Court may *take into*

consideration the proved confession of any one of them, not only against him but also against the others. But such a confession must be corroborated, and where there is no other evidence, it will not justify the conviction of any other person than the author.

I.E. Act, s. 30 ; M.I.M.L., V., 27.

A confession is only admissible if it was voluntary. The Court will deem it to be voluntary, unless the accused proves that it is not. It is not deemed to be voluntary if it was caused by any inducement, threat, or promise, having reference to the charge, made by any person in authority, sufficient in the opinion of the Court to give him reason for supposing that he would gain any advantage or avoid any evil of a *temporal* nature in connexion with the charge. The prosecutor, or a person having the custody of the accused, are persons in authority.

I.E. Act, s. 24 ; M.I.M.L., V., 28, 29.

A confession is not involuntary because it was made in consequence of the exhortations of a person in authority to make it as a *religious* duty, or by an inducement collateral to the proceedings, or by inducements made by a person not in authority. It is deemed to be voluntary if made after the complete removal of any such impression as stated above.

I.E. Act, s. 28 ; M.I.M.L., V., 30, 32.

A confession is not involuntary because it was made under a promise of secrecy, or when the person making it was drunk, or because he was not warned ; though it would, of course, be highly improper to endeavour to obtain a confession by fraud or deception.

I.E. Act, s. 29.

In order to prevent confessions being extorted by torture or duress, the Act specially provides that no confession made to a police officer is admissible, and no confession made while in the custody of a police officer, unless made in the immediate presence of a magistrate, is admissible. The term "police officer"

includes all ranks, from a Deputy Commissioner of Police to a village chowkidar.

I.E. Act, ss. 25, 26 ; M.I.M.L., V., 26, 33, and *note.*

Evidence amounting to a confession may be used as such against the person who gave it; similarly statements made by an accused to his Commanding Officer when investigating the charge may be used. But the Proceedings of a Court of Inquiry, or any confession or statement made at a Court of Inquiry, are not admissible except for the trial of a person for wilfully giving false evidence before the Court.

M.I.M.L., V., 35.

Facts discovered in consequence of a confession, which is itself inadmissible because made to a police officer, may, however, be proved.

I.E. Act, s. 27 ; M.I.M.L., V., 33.

If a confession is used the whole of it must be given in evidence, and not only the part adverse to the accused. **M.I.M.L., V., 34.**

Illustrations

Sepoy A. is on his trial for breaking into the Officers' Mess and stealing a piece of the mess plate. There is evidence to show that Sepoy B. was also concerned in the offence and has confessed that "he and A. broke into the mess and took the plate." The Court *cannot* consider this statement as A. and B. are not being jointly tried.

A British officer has been murdered. The Governor-General-in-Council issues a notice promising a pardon to any accomplice who will confess the crime and give evidence convicting the principal offender. Under hope of securing this pardon, C. confesses. This confession is *not* voluntary.

Sepoy D. is under arrest on a charge of selling his rifle. His brother is allowed to see him on a family matter, and during the interview advises him "for the honour of the family" to confess his offence. He does so. This is voluntary.

(v) *Hearsay*

As a general rule the statements of persons not called as witnesses cannot be given in evidence. Such statements are known as "hearsay." **M.I.M.L., V., 36.** "*Hearsay*" has been well defined as "the oral or written statement of a person, who is not produced in Court, conveyed to the Court either by a witness or the instrumentality of a document." **Powell, p. 132.**

It will thus be seen that the term includes written as well as oral statements. The reasons for excluding such statements are: (1) they are not made on oath or affirmation; (2) the person affected by them has had no opportunity of cross-examining their author; and (3) the author of the statement is not before the Court so that they can judge as to his credibility, from his demeanour and the way in which he gives his evidence. **M.I.M.L., V., 37.**

There are, however, several important exceptions to the general rule that the statement of an absent person is not evidence.

(*A*) Statements forming part of the transaction (or *res gestæ*), or indicative of the state of mind or body which are relevant, *e.g.* statements made by the deceased in a poisoning case, as to his health and symptoms. **M.I.M.L., V., 36** (*vide supra*, p. 98).

(*B*) *Dying declarations—i.e.* statements made by a person since dead as to the cause of his death. Such declarations are admissible in any trial, where the cause of death becomes a fact in issue. It is not necessary that the declarant should have given up all hope of recovery or be in immediate fear of death.

I.E. Act, s. 32 (1); M.I.M.L., V., 38, 39.

(*C*) *Statements or entries made in the ordinary course of business.*—These are admissible if the person who made them is dead, or has become incapable of giving evidence, or cannot be found, or whose attendance cannot be procured without unreasonable delay or expense. So long as they were made in the course of business, it need not have been the *duty* of the declarant to make them and they need not have been made contemporaneously.

I.E. Act, s. 32 (2); M.I.M.L., V., 38, 40, 41.

(*D*) *Statements against self-interest.* As in the last case these may be proved if the author of them cannot, for the reasons given above, be called as a witness.

I.E. Act, s. 32 (3); M.I.M.L., V., 38, 40.

(*E*) *Evidence given at a previous trial.*—Where a witness has given evidence at a previous trial, and cannot attend the present one, his evidence at the previous trial is admissible, provided it was given on oath or affirmation, against the same accused, who had liberty to cross-examine, and if the witness now (1) is dead, (2) cannot be found, (3) is incapable of giving evidence, (4) is kept out of the way by the accused, or (5) if his presence cannot be obtained without unreasonable delay or expense.

I.E. Act, s. 33 ; M.I.M.L., V., 42, 43.

Illustrations

Sepoy A. is charged with the murder of Z. The latter makes a statement which is taken down in writing, to which the officer taking it down adds, " I make this statement with no hope of recovery." On it beaing read over to Z. he corrects it to " no hope *at present* of recovery." The statement is admissible.

Havildar B. is charged with burglary at Lucknow on a certain date. An entry in a diary, kept in the ordinary course of his business, by a solicitor at Calcutta, since deceased, that the accused was in Calcutta on that date consulting him professionally is admissible.

Naick C. is charged with embezzling money belonging to the officers' mess. An entry in a book kept by a tradesman, since deceased, that Naick C. had paid a certain bill owing by the mess is admissible.

Sepoy D. is being tried by District Court-Martial for striking Havildar E. After the Havildar has given evidence one of the members is taken ill and unable to attend further. The Court being reduced below the legal minimum is dissolved ; and the Convening Officer assembles a fresh Court. Before it assembles Havildar E. dies. The evidence he gave at the first trial is admissible before this second Court.

It must be carefully noted that there is no provision for making the summary of evidence admissible in the same way as evidence given on oath, as stated as above.

M.I.M.L., V., 44.

(vi) *Documents*

As already stated the rule excluding " hearsay " extends to written as well as oral evidence. Unless, therefore, a writing or document is made admissible by some Act it is inadmissible. **M.I.M.L., V., 45.**

A " *document* " means any matter expressed on any substance by means of letters, figures, or marks, or any of them, intended to be used as a record.

I.E. Act, s. 3.

The Evidence Act makes entries in books of account, regularly kept in the course of business, admissible; also entries in public or official books and records, officially made in the course of duty.

I.E. Act, ss. 34–38 ; M.I.M.L., V., 46, 47.

The Indian Army Act also makes the following documents admissible for the purpose stated in any proceedings under the Act :

Document :	*Evidence of :*
(*a*) The enrolment paper signed by the enrolling officer.	(*a*) The person enrolled having given the answers therein recorded.
(*b*) A copy of the enrolment paper certified as a true copy by the officer having the custody of the original.	(*b*) The enrolment of the person named in it.
(*c*) A letter or return as to the service in, or dismissal of any person from, any part of His Majesty's Forces, signed by or on behalf of the Governor-General, or the Commander-in-Chief, or the prescribed officer.	(*c*) The facts therein stated.

The " prescribed officer " is the Commanding Officer of the Corps or Department to which the person belonged or alleges he belonged. **r. 154** (c).

(*d*) An Army List or Gazette purporting to be published by authority.	(*d*) The status and rank of Officers and Warrant Officers mentioned therein, and their appointments, Corps, etc.

The whole "Gazette" must be produced and not merely a cutting. **Phipson, p. 9.**

Document:	*Evidence of;*
(*e*) Any record in any Regimental book made in pursuance of the Act, or the Rules, or in pursuance of military duty, and signed by the proper officer.	(*e*) The facts therein recorded.

A list of the "Regimental Books" to be kept up in every unit of Corps or Departments is laid down in A.R.I., Vol. II., 710.

(*f*) A copy of any such record, certified to be a true copy by the officer having the custody of the book.	(*f*) Such record.
(*g*) On a charge of desertion or absence without leave, a certificate signed by the Provost-Marshal, or the Assistant Provost-Marshal, or the Officer, or the Commanding Officer of the Unit, by whom the accused was apprehended or to whom he surrendered; or by a Police Officer in charge of a Police Station, when the apprehension or surrender was by or to the police. **ss. 91, 91A.**	(*g*) The matters therein stated as to the fact, date, and place of such apprehension or surrender.

If on his trial for desertion, or absence, or not rejoining when warned for service, the accused gives any reasonable

excuse for his absence and refers to any Military or Civil Officer in the Government Service to support his defence, or if the Court thinks he can do so, they will refer to such officer and adjourn pending a reply. The written reply of such officer signed by him is admissible in evidence, either before the same Court or another. **s. 92.**

(vii) *Opinion*

As a general rule the opinion or belief of a witness is not evidence. A witness must testify to facts which he has seen, heard, or otherwise perceived by his senses. There are, however, certain exceptions to the general rule, of which the following are the principal :

(*a*) On questions of identification, a witness may give his opinion or belief.

(*b*) Opinion is admissible as to the age of a person, or the apparent condition or state of a person or thing, or the value of a thing.

(*c*) The opinion of an expert is admissible on questions of science or art, or handwriting, etc.

I.E. Act, s. 35 ; M.I.M.L., V., 50, 51 ; Phipson, pp. 121–124.

An " expert " is only so considered when he satisfies the Court that he is specially skilled in the particular art or science, which must be one requiring a special course of study. The evidence of experts should be received with caution, as they are apt to be biased in favour of the case they are supporting.

Powell, p. 434.

Handwriting may be proved by the opinion of a witness acquainted with the writing of the person supposed to have written the document, even though not an " expert " in handwriting. It will be enough if—

(i) he has seen that person write ;

(ii) he has received documents purporting to be written by that person in reply to documents written by him ;

(iii) documents purporting to be written by that person have been habitually submitted to him in the ordinary course of business.

I.E. Act, s. 47 ; Man., V., 54.

Handwriting may also be proved by comparison by the Court of the writing in dispute with a document admitted or proved to be in the handwriting of the alleged writer; and the Court can order any one to write any words or figures for the purpose of such comparison. It must be, however, remembered that in such a case this writing may be purposely disguised.

I.E. Act, s. 73 ; M.I.M.L., V., 55.

Handwriting may also be proved by the admission of the person who actually wrote it; or by a witness who actually saw the writing executed; or by circumstantial evidence, as where a person has been the sole occupant of a room, and immediately after he leaves it, a document with the ink still wet is found in the room. **M.I.M.L., V., 56 ; Powell, p. 45.**

Illustrations

Sepoy A. is charged with attempting to steal goods belonging to an officer of his regiment, who was disturbed at night by the noise, and got up in time to see the thief running away. The officer may give an opinion as to the identity of the accused with the man he saw running away.

Sowar B. is charged with cruelty to his horse. His Squadron Commander can give an opinion as to the condition or state of the horse when he saw it.

Sepoy C. is charged with the murder of Havildar D. by posioning him. A medical officer may give an opinion as to the symptoms produced by the poison C. is alleged to have used.

Naick E. is charged with making a forged document. This document may be compared with a genuine one proved or admitted to be in E.'s handwriting, by a witness skilled in handwritings; or any one acquainted with E.'s writing may give an opinion as to whether the document in question was written by him.

(viii) *Character*

The *good* character of the accused is always relevant, but his *bad* character is only relevant if he tries to prove his good character. Character means reputation and disposition, which must be proved by evidence of a general nature and not as to particular acts; except that a previous conviction is evidence of bad character.

I.E. Act, ss. 53–55 ; M.I.M.L., V., 60.

Where the accused endeavours to prove a good character, this must be of a nature antagonistic to the commission of the particular offence with which he is charged; *e.g.* if charged with theft, a character for bravery would not help to secure an acquittal, though one for honesty might. Evidence of good character will not gain an acquittal in cases where the guilt of the accused is beyond doubt, but where such doubt exists it might turn the scales in his favour. Evidence that the accused committed a similar offence on another occasion is not admissible to prove a general tendency to commit this offence. Such evidence can only be given if the previous offence—

(i) Forms part of the same transaction;
(ii) Shows the existence of a relevant state of mind or body;
(iii) Negatives the defence of accident or misfortune.

M.I.M.L., V., 62, 63.

(B) Proof

(i) *Facts not Requiring Proof*

All Courts take *judicial notice*, that is to say, do not require evidence, of facts which are so generally well-known that no proof of them is necessary. The Indian Evidence Act requires Courts to take judicial notice of all laws in force in British India, all public Acts of Parliament, the general proceedings of Parliament, the accession of the Sovereign, certain official seals, the existence of every State or Sovereign recognized by the Crown, the natural divisions of time, and any festivals or holidays notified in the *Gazette*, the geographical divisions of the world, the territories under the British Crown, the commencement and termination of war between the King and any other State, etc.

I.E. Act, s. 57.

The Indian Army Act also provides for a Court-Martial taking *judicial notice* of any fact within the general military knowledge of the members; *e.g.* the relative ranks of officers, warrant officers, and non-commissioned officers; the general duties of various ranks, etc. **s. 89 ; M.I.M.L., V., 66.**

Any facts of which a Court is required to take judicial notice, or any which are admitted by either party to the trial do not require proof.

I.E. Act, ss. 56, 58 ; M.I.M.L., V., 68.

(ii) *Oral Evidence*

All facts, except documents, may be proved by oral evidence, that is evidence given orally by a witness before the Court. This includes evidence given by signs in the case of a deaf and dumb witness.

I.E. Act, ss. 59, 119 ; M.I.M.L., V., 70, 91.

If such oral evidence refers to the existence or condition of any material object, other than a document, the Court may require it to be produced for inspection. **I.E. Act, s. 60 ; M.I.M.L., V., 72.**

(iii) *Documentary Evidence*

The contents of a document may be always proved by primary evidence, and by secondary evidence, when the latter is admissible. **I.E. Act, ss. 61, 65, 77, 78.**

Primary evidence means producing the document for the inspection of the Court. Where a document is executed in duplicate (or more parts), or where a number of them are all made by a uniform process such as printing, each is original and primary evidence of the contents of all.

I.E. Act, s. 62 ; M.I.M.L., V., 74.

Secondary evidence means a certified copy of the original; or a copy produced by mechanical process,

such as photography; or an oral account of the contents by some one who has seen the document.

I.E. Act, s. 63 ; M.I.M.L., V., 77.

Public documents are :—

(i) Those forming the acts or records of the acts of—

(*a*) The Sovereign authority ;
(*b*) Official bodies and tribunals ;
(*c*) Public officers of British India, or of any other part of the King's dominions, or of a foreign country.

(ii) Public records kept in British India of private documents.

Private documents are all those other than the above.

I.E. Act, ss. 74, 75.

The contents of public documents can always be proved by copies certified by the prescribed officer, or by printed copies purporting to be printed by authority or by the King's printer. **I.E. Act, ss. 76–78.**

The contents of a private document must ordinarily be proved by primary evidence, and secondary evidence can only be given under the circumstances mentioned in the Evidence Act, of which the following cases are the most important.

(i) When the original is in the possession of the adverse party, who, after due notice to do so, refuses to produce it.
(ii) When the original has been lost or destroyed.
(iii) When the original is of such a nature as not to be easily movable ; *e.g.* insulting remarks chalked on an officer's door.
(iv) When the original consists of numerous accounts or other documents, which cannot be conveniently examined in Court, and the fact to be proved is the general result of the whole collection.

I.E. Act, ss. 64, 65 ; M.I.M.L., V., 76.

It should be noted that in cases where secondary evidence is admissible, either an oral account or a certified copy is equally *admissible*, though in most cases the latter means of proof would be more *credible*.

A Court may presume the telegram delivered to the person to whom it is addressed from a telegraph office corresponds with the original handed in at the office of origin; but it cannot make any presumption as to the person who handed it in. **I.E. Act, s. 88.**

On evidence being adduced that a letter, properly addressed and stamped, was posted in a public letter-box and has not been returned through the Dead Letter Office, a Court may presume that it was duly received by the addressee, until he proves the contrary. **M.I.M.L., V., 25.**

Where any document is produced at a Court-Martial, purporting to be signed by any officer in the Civil or Military Service of the Government, it will be presumed it was duly signed by such person until the contrary is proved. **s. 90.**

(C) Production and Effect of Evidence

(i) *Burden of Proof*

The burden of proof lies on that side against whom the verdict would be given if no evidence were produced, hence as it is a presumption of law that every one is innocent till legally convicted of a crime, it is not for the accused to establish his innocence until the prosecution has raised a presumption of guilt. Moreover, whoever desires the Court to give judgment as to any liability dependent on facts which he asserts, must prove those facts. Therefore, in all criminal trials, the burden of proof will at the beginning of the case rest on the prosecution. **I.E. Act, ss. 101, 102.**

When, however, the evidence for the prosecution has raised a presumption of guilt on the part of the

accused, the burden of proof will now shift, and if he has any evidence which will establish his innocence, or bring him within the general exceptions which excuse him from liability for his actions it will now be for him to produce such evidence. Moreover, the burden of proving any fact within the peculiar knowledge of any person, lies on that person.

I.E. Act, ss. 105, 106 ; M.I.M.L., V., 82–85.

Illustrations

Sepoy A. is charged with striking Naick B. The burden of proof rests on the prosecutor to prove A. did strike B. knowing the latter was his superior. Having proved this, the burden of proof of any justification or excuse shifts to A. He proves that though he did strike B., the latter was attacking him and beating him, and that the blow he (A.) struck was *se defendo*. Which would be a justification.

Lce. Naick C. is charged with absence without leave. The prosecutor having proved the absence, does not have to prove that C. had no leave to be absent. The burden of proving that he had such leave (if in fact he had) rests on C.

(ii) *Competency of Witnesses*

All persons, other than the accused or persons jointly tried, are competent witnesses, except those who in the opinion of the Court, are unable to understand the questions put or to give reasonable answers, by reason of—

(i) tender years ;
(ii) extreme old age ;
(iii) disease of the mind or body ;
(iv) any other like cause.

I.E. Act, s. 118 ; M.I.M.L., V., 86.

The accused cannot give evidence himself ; but he may make an unsworn statement in his defence giving his account of the case, and the Court must consider this and will give it more or less credence according to the circumstances.

r. 48 (B), *note ;* **M.I.M.L., V., 87, 88.**

The wife or husband of the accused is a competent witness both for the prosecution and the defence.

I.E. Act, s. 120 ; M.I.M.L., V., 87.

An accomplice is a competent witness, provided he is not being jointly tried with the accused. If the accused wishes to call a person who is to be jointly tried with him, as a witness in his defence, he must apply for separate trial. **r. 24.** A conviction is not illegal because it was secured on the uncorroborated evidence of an accomplice, but such evidence is always looked on with suspicion, and in practice corroboration is always required.

I.E. Act, s. 133 ; M.I.M.L., V., 89, 90.

No particular number of witnesses are required to prove any fact. **I.E. Act, s. 134.**

(iii) *Privilege of Witnesses*

Although a witness may be *competent* to give evidence, it does not follow that he is *compelled* to answer every question put to him, or to produce every document called for. A witness cannot decline to answer a question merely because the answer may tend to incriminate him, that is expose him to a penalty. But no such answer may be used against him in any criminal proceeding, other than a prosecution for perjury. **I.E. Act, s. 132 ; M.I.M.L., V., 93.**

A husband or wife is not compellable to disclose any communication made to him or her by the other party during marriage, and this privilege continues even after the death of one of them.

I.E. Act, s. 122 ; M.I.M.L., V., 98.

On considerations of public policy, no witness is permitted to give any evidence on matters relating to affairs of State in any unpublished records, without the permission of the Head of the Department concerned ; nor can any public officer be compelled to disclose communications made to him in official confidence, which he thinks it is against the public interest to disclose. No Magistrate, Police Officer, or

Revenue Officer can be compelled to say whence he got information as to the commission of an offence. No Judge or Magistrate, except on the special order of a Superior Court, can be compelled to answer any question as to his conduct in Court or as to anything which came to his knowledge as a Judge or Magistrate.

I.E. Act, ss. 121, 123–125 ; M.I.M.L., V., 94–96.

A legal adviser may not, without his client's express consent, divulge any communication made to him in the course of his employment as such legal adviser, even though such employment has terminated. This does not include any communication made for an illegal purpose, or any fact he may have observed during such employment, showing that a crime or fraud has been committed since the commencement of his employment. The term "legal adviser" includes a barrister, attorney, pleader, or vakil, and interpreter, and their clerks or servants. It would also include an officer or other person who has assisted an accused person during his trial by Court-Martial.

I.E. Act, ss. 126, 127 ; rr. 81, 115 ; M.I.M.L., V., 99.

Where the privilege is that of the witness, he or she may waive it and may answer the question ; but where the privilege is that of other parties the witness cannot waive it without their consent. **M.I.M.L., V., 97.**

Illustrations

Sepoy A. is a witness against Sepoy B., charged with murdering his wife by poisoning her, and is asked whether he did not, at the request of B., procure the poison for him. He can be compelled to answer although the answer may incriminate him as having abetted the murder. But if tried for this offence, his answer cannot be used against him.

Subadar C. is being tried for extortion. Z. the wife of Jemadar D., now dead, is asked whether her husband had not told her that he knew the Subadar was extorting money from the men and had given him Rs.50 to hold his tongue. She cannot be compelled to answer this question.

Havildar E. is being tried for releasing without proper authority two State prisoners, who were in the custody of a guard of which he was the Commander. A Court of Inquiry had been held to inquire into the circumstances under which these prisoners escaped. Havildar E. calls his Commanding Officer as a witness and asks him for the production of the Proceedings. They cannot be produced without the consent of the Commander-in-Chief.

Havildar F. is being tried for having given false evidence at the trial of Sepoy G., who was tried for desertion. Lieut. H., who defended G., is called as a witness by Havildar F. and asked whether G. had not told him he did not intend to return. Lieut. H. cannot be compelled to answer this question without G.'s consent.

J., an attorney, is retained by Subadar K. to defend him on a charge of embezzlement. During the course of the proceedings he notices that an entry has been made in K.'s book of accounts which was not originally there, charging him with the sum he is said to have embezzled. As this is a fresh fraud since the commencement of the proceedings, it is not privileged and J. can be compelled to answer questions about it.

(iv) *Examination of Witnesses*

Every witness, including one producing documents, must be sworn or affirmed. **s. 83 ; M.I.M.L., p. 239, paras. (9), (10).** The witness is then first examined by the party calling him—this is the " examination-in-chief " ; he is then liable to " cross-examination " by the adverse party ; he may then be " re-examined " by the party who called him. **I.E. Act, ss. 137, 138 ; M.I.M.L., V., 102, 107, 116.** Any member of the Court, or the Judge-Advocate, or the officer holding the trial (at a Summary Court-Martial) may also put any question to a witness. **r. 128 (A).**

If during a trial the Court consider the evidence of a witness is necessary, but that the witness's attendance cannot be procured without unreasonable delay or expense, the Court can move the Judge-Advocate-General to issue a commission to take the evidence of such witness, and adjourn. If the Judge-Advocate-General thinks fit he can issue a commission in India to any District or first-class Magistrate ; or to the officer representing the British Government in a Native State ; or, out of India, to any British Consul, or Magistrate, or other official competent to administer an oath, where the witness resides. The Magistrate or other officer will then summon the witness before him and take his evidence, including his answers to any interrogatories which the prosecutor or accused may forward, provided the Court consider them relative. The prosecutor and accused may appear in person, or

by counsel, at the examination of the witness and examine or cross-examine him. The commission will then be returned to the Judge-Advocate-General, with the deposition made by the witness; and will be forwarded by him to the Court. If the original Court has been dissolved the commission can be forwarded to, and the evidence is admissible before, any other Court convened for the trial of the accused on the issue. **s. 85.**

In the examination-in-chief every question must be relevant, and, as a rule, must not be a "leading question," *i.e.* one which suggests the answer required. The exceptions to this rule are, when the questions relate only to introductory or undisputed matters, or to identity of articles produced in Court, or when the witness proves "hostile." A witness is said to be "hostile" when he appears to be unwilling to give evidence in favour of the party calling him or to be interested in the other side. In such a case the rule forbidding leading questions ceases to have any reason, and such a witness may be asked leading questions and cross-examined and treated in every way as though he had been called by the other side. His credit may be impeached and he may be asked questions to show he has a bad character.

I.E. Act, ss. 141, 142, 154; M.I.M.L., V., 102–106.

After the examination-in-chief is finished the opposite party has the right to cross-examine the witness, including a witness as to character; but a witness who is merely called to produce documents is not liable to cross-examination. Leading questions may be put and also questions otherwise irrelevant, which tend to (1) test his veracity, or (2) to shake his credit by injuring his character.

I.E. Act, ss. 139, 140, 143, 146; M.I.M.L., V., 107.

If, however, any such question is only relevant in so far as it injures the character of the witness, the Court will decide whether he need answer it, and in so

deciding will be guided by the following considerations. Such questions are :—

(*a*) *Proper*, if the truth of the imputation conveyed by them would, in the opinion of the Court, seriously affect the credibility of the witness ;

(*b*) *Improper*, if they relate to matters so remote in time or are of such a character that they would not affect, or only slightly, the credibility of the witness ;

(*c*) *Improper*, if there is a great disproportion between the importance of the imputation against the character of the witness and that of his evidence.

No such questions should be asked, unless the cross-examiner has reasonable grounds for thinking the imputation conveyed is well founded.

I.E. Act, ss. 148, 149 ; M.I.M.L., V., 110.

When a witness is asked a question which is only relevant in so far as it shakes his credit by injuring his character and answers it, no evidence can be given to contradict him ; except (1) if he is asked whether he had been previously convicted and he denies it, or (2) if he is asked a question to show he is not impartial and he denies the facts suggested ; when in either of these cases he may be contradicted by other evidence.

I.E. Act, s. 153 ; M.I.M.L., V., 111.

Illustrations

A barrister is informed by the attorney instructing him that a principal witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.

A witness, of whom nothing is known, is asked if he is a dacoit. This is an improper question as there are no reasonable grounds for it.

At the trial of Sepoy A. for intoxication and resisting the escort, a civilian witness is called to give evidence that A. was drunk in the streets of Bombay and struggling with the military police. The witness is a most respectable merchant of Bombay, married, and enjoying the society of a large circle of friends, all of whom are in ignorance that more than thirty years ago he was sentenced to transportation. It would be an improper question to ask him about this previous conviction, as it would not affect the credibility of his present evidence.

Sepoy B. is being tried for theft from an officer. C., the officer's servant, is a

witness for the prosecution and is asked in cross-examination if he had not been dismissed from the service of another officer. He denies it. The defence wishes to produce evidence to show he had been so dismissed. The evidence is inadmissible.

Sepoy D. is charged with striking Havildar E., who gives evidence against him, and is asked whether there is not a blood feud between his family and that of accused. He denies it. Evidence is admissible to contradict him, as it will impeach his impartiality.

The credit of a witness may be impeached in the following ways :—

(*a*) by the evidence of witnesses who swear that from their knowledge of him, they believe him to be unworthy of credit ;

(*b*) by proof that he has been bribed, or corruptly induced to give his evidence ;

(*c*) by proof of former statements made by him which are inconsistent with his present evidence ;

(*d*) in cases of rape, it may be shown that the prosecutrix is of general immoral character.

The witness must not in the examination-in-chief give his reasons for his belief, but he can be asked for his reasons in cross-examination.

I.E. Act, s. 155 ; M.I.M.L., V., 112, 113.

If the cross-examination has damaged the evidence given by the witness in his examination-in-chief, the party calling him may, if he wishes, re-examine him to try to reconcile any weak points which the cross-examination has brought to light This re-examination must deal only with the explanation of matters raised by the cross-examination ; unless by leave of the Court any new matter is introduced, in which case the other party can further cross-examine the witness as to this new matter. **I.E. Act, s. 138 ; M.I.M.L., V., 116.**

A witness may not read his evidence, but he may refresh his memory by referring to any written notes made by himself at the time of the transaction referred to, or so soon afterwards that the Court thinks it likely they would be fresh in his memory. He may also use for this purpose notes made by another person,

and read by him when the matter was fresh in his memory, so that he knew the notes were correct.

I.E. Act, s. 159 ; M.I.M.L., V., 117.

The improper admission or rejection of any evidence at a trial is not of itself a ground for upsetting the verdict, if it appears that there was sufficient evidence, other than that improperly admitted, to justify the verdict, or that if the rejected evidence had been admitted it would not have altered the decision.

I.E. Act, s. 167.

CHAPTER XIV

COURTS OF INQUIRY AND BOARDS

A COURT of Inquiry is an assembly of officers directed to collect and record evidence on any matter referred to them and, if so required, to give an opinion thereon. Such Court has no judicial power, and cannot compel the attendance of civilian witnesses; military witnesses would be ordered to attend as a matter of discipline. It may be convened by any Officer Commanding any body of troops, whether belonging to one or more corps. It may consist of any number of members (not less than two), who may be of any rank or branch of the Service. As a rule three will be enough, the senior presiding. In the case of a mixed civil and military Board, the members will take precedence in accordance with the Table of Precedence given in the Indian Army List.

r. 158 (A), (B), (C); A.R.I., Vol. II., 268.

The Court will be guided by the written instructions of the Convening Officer, which will state the general nature of the inquiry and whether a report is required. Whenever the inquiry affects the character or reputation of a person subject to military law (except a prisoner of war still absent), due notice must be given him of every sitting and adjournment, in order to give him an opportunity of being present, and of cross-examining any witness whose evidence he considers affects his character or reputation, and of giving any evidence he may wish to give, or of calling any witnesses in defence of his character; but he has no right to claim to be represented by counsel, and it is unusual to permit the attendance of any professional adviser. **r. 158 (D), (E), (F).**

The members of a Court of Inquiry are never sworn, **r. 158** (I); and the evidence is only given on oath or affirmation in the following cases :—

(*a*) Inquiry into illegal absence. **s. 126; r. 159** (E).

(*b*) Inquiry on prisoners of war. **s. 113** (**2**) (*c*); **158** (H).

(*c*) When the Convening Officer so directs. **s. 113** (**2**) (*c*); **158** (H).

The law as to the Court of Inquiry on illegal absence held under s. 126, and that assembled to investigate the circumstances of a loss or theft of arms held under s. 21 of the Act has already been stated (*vide supra*, pp. 11 and 18).

Whenever a soldier or public follower has been injured, either on or off duty (except by wounds in action), the Medical Officer will send a certificate to the man's Commanding Officer. If the injury is trivial and unlikely to cause permanent ill-effects, a Court of Inquiry need not be held unless considered necessary; if, however, the injury is serious, or doubt exists as to the cause of the injury, or whether the man was on duty or not, or for other reason it is necessary, a Court of Inquiry will be assembled to investigate the case. The Court will give no opinion, but the Commanding Officer will record his opinion stating whether the man was on duty or not, and whether he was to blame. Injuries sustained during physical exercises or training games carried out as parades under supervision, are considered to have occurred on duty; but injuries at games or sports out of parade hours, which are not compulsory, are not treated as having occurred on duty. The Proceedings are confirmed by the Brigade Commander.

A.R.I., Vol. II., 269, 299; K.R., 735.

Whenever persons subject to the Act are taken prisoners of war, a Court of Inquiry is to be held under local arrangements to inquire into their conduct and the circumstances of their capture. As a rule the Court will not be held till after the return of the

prisoner, but when there is reason to believe he was taken voluntarily or through wilful neglect of duty, or that he has aided the enemy, a provisional Court will be held as soon as possible. A Court may also be assembled, while the prisoner is still absent, to enable the prescribed authority to make any remission of forfeiture of pay under s. 52, or to provide for his dependents under s. 52A. Before commencing their proceedings the members will make a "declaration on honour," similar to the oath taken by the members of a Court-Martial. The Proceedings are sent to the Officer Commanding the Command, or District, or forces in the field. **r. 158 (I) ; A.R.I., Vol. II., 270.**

Special instructions for a Court of Inquiry assembled to investigate the cause of a fire, explosion, or other similar occurrence involving loss of public property, are given in A.R.I., Vol. II., 413.

Panchayats, or courts of arbitration, may be held in Indian units, with the consent of the parties concerned, for the settlement of private disputes. The arbitrators will be appointed by the disputants, with an umpire appointed by the Unit Commander. Their names, together with the substance of the matter in dispute, and the agreement of the parties to abide by the decision must be recorded. The award must be signed by the President, and in the case of pecuniary damages must not exceed six months' pay and allowances. The award, if legal, cannot be overruled by the Unit Commander merely because he does not agree with it. **A.R.I., Vol. II., 271.**

Where a person subject to the Act or any member of his family dies by suicide, violence, accident, or under suspicious circumstances in a place out of British India, where no Criminal Court has been constituted by the Governor-General-in-Council, the Officer Commanding on the spot will convene a Court of Inquest. This Court will follow the rules laid down in the Rules of Procedure framed under the Army Act (British). **A.R.I., Vol. II., 271.**

CHAPTER XV

ENROLMENT, ATTESTATION, AND DISCHARGE

ENROLMENT

RECRUITING for the Indian Army of all personnel, whether combatant or non-combatant, is carried out under the control of the Adjutant-General, and in accordance with the instructions in the "Recruiting Regulations, Indian Army." **A.R.I., Vol. II., 127.**

All ranks, both combatant and non-combatant, must be enrolled. **A.R.I., Vol. II., App. XXXI.**

On a person appearing for enrolment, the prescribed Enrolling Officer reads over and explains to the would-be recruit the conditions of service which he is about to enter, and puts the questions in the enrolment paper to him, and after cautioning him as to the penalty for any false answer, causes his answers to be recorded, and then he and the man sign the enrolment paper. **ss. 8, 9.** He then sends the enrolment paper to the officer having the custody of the Long Roll of the Corps for which the man has been enrolled. **r. 7** (B).

The officers who are prescribed as Enrolling Officers for the various Corps of the Indian Army are laid down in Rule 7 (A). For form of enrolment paper, *vide* Rules, App. I. The different bodies of troops which form a "Corps" for the purposes of enrolment and a soldier's service are prescribed by r. 161 (A).

The terms of service for combatants are: (1) for Infantry and Pioneers (except Gurkhas and 4th Hazara Pioneers), 5 years' army service and 10 years' reserve service; (2) for all other corps, except departmental corps, 4 years' army service and no reserve service;

(8) Army Service Corps and Army Veterinary Corps, 6 years' army service and 4 years' reserve service.

A.I. $\frac{638}{23}$.

When any person has received military pay and been borne on the roll of any corps or department for six months, he is deemed to have been properly enrolled, and he cannot claim his discharge on the ground of any illegality in his enrolment. **s. 10.**

Attestation

All combatants, and certain classes of non-combatants, as prescribed by the Governor-General-in-Council, must in addition to being enrolled also be attested. **s. 11.** Those for whom attestation is necessary are given in r. 8 and A.R.I., Vol. II., App. XXXI.

No enrolled person is to be attested until his character and antecedents have been verified. **A.R.I., Vol. II., 129.** When a combatant or non-combatant of the specified classes is reported fit for duty or has completed the prescribed period of probation, he will, if his character and antecedents are satisfactory, be attested in the prescribed manner by the officer having power to attest soldiers, usually his Commanding Officer. Attestation is carried out in front of the Corps, or such members of the department as can be present, and the prescribed oath or affirmation is administered to the man by the Attesting Officer. The fact of his having been attested and taken the oath is entered in his enrolment paper and signed by the officer. If no officer is available, he can be attested by a Magistrate.

s. 12 ; r. 9.

Transfer to the Reserve

The Indian Reserve is governed by the Indian Reserve Forces Act, 1888, and the rules made thereunder, which will be dealt with in Chapter XIX.

Soldiers enrolled for partly army and partly reserve service will be transferred to Class A of the Reserve, on completing their colour service. Those who enrolled for army service may, with their own consent, be transferred to the Reserve for the remainder of their enrolment, provided there is a vacancy in the reserve establishment. They can only be transferred as privates, and must be of good character and physically fit. After completing the period for which they were originally enrolled they will for the purposes of discharge or further service be treated in the same manner as though they had enrolled direct into the Reserve. **A.R.I., Vol. II., 128, 160 ; A.I., $\frac{638}{23}$, $\frac{639}{23}$.**

When a man is transferred to the Reserve, his Commanding Officer must explain to him his liability to attend for training or service when ordered, and the restrictions as to his leaving India or taking certain employment, and the obligation to report his address. **R.F.R., 15.**

Discharge

Every person enrolled under the Act must be discharged when entitled under the conditions of his service, with all convenient speed, *i.e.* without unnecessary delay. **r. 10.**

The Authorities who have power to *dismiss* a person have been dealt with in the chapter dealing with Punishments (*vide supra*, p. 8). The Authorities empowered to carry out discharges of officers and other ranks, and the various grounds for discharge, are laid down in the Table given in Rule 13.

Every person, whether dismissed or discharged, must be given a certificate showing in English and in the man's own language—

(*a*) the authority dismissing or discharging him ;
(*b*) the cause of his dismissal or discharge ;
(*c*) his total length of service in the Army.

s. 17 ; r. 11.

When any person becomes entitled to discharge, or is ordered to be dismissed, while serving out of India and requires to be sent to India, he must be sent there with all convenient speed before being discharged or dismissed; provided that if any other punishment is combined with dismissal such other punishment can be served before he is sent to India for dismissal. **s. 18.**

CHAPTER XVI

DEFINITIONS

A *British Officer* means a person holding a commission in His Majesty's land forces. **s. 7 (1).** Such a commission is issued by the King.

An *Indian Officer* means a person commissioned, gazetted, or in pay as an officer holding an Indian rank in His Majesty's Indian Forces. **s. 7 (2).** A list of these ranks is given in A.R.I., Vol. II., 115. These commissions are issued by H.E. the Viceroy.

A.R.I., Vol. II., 116–118.

An *Officer* means a British or Indian Officer, but does not include a warrant or non-commissioned officer.

s. 7 (5).

A *Warrant Officer* means a person appointed, gazetted, or in pay as an Indian Warrant Officer in the Indian Forces. **s. 7 (3).** A list of these is given in A.R.I., Vol. II., 146.

A *Non-commissioned Officer* means an attested person holding an Indian non-commissioned rank in the Indian Forces, and includes an acting non-commissioned officer. **s. 7 (4).** A list of these ranks and the appointments carrying such rank is given in A.R.I., Vol. II., 146.

A *Commanding Officer* means the British officer whose duty it is by regulation or the custom of the Service to discharge the duties of a Commanding Officer as regards any separate portion of His Majesty's Forces. **s. 7 (6).**

A Superior Officer includes a warrant or non-commissioned officer when used in relation to a soldier or person subject to the Act, and includes a warrant officer or non-commissioned officer subject to the Army Act (*i.e.* a British warrant or non-commissioned officer) as regards persons placed under his orders. **s. 7 (7).**

A *Corps* means any separate body of persons subject to this Act, or the Army Act, which is prescribed as a corps for any purpose. **s. 7 (9).** Various bodies are so prescribed in Rule 161.

Active Service means the time during which a person is attached to or forms part of any force engaged in operations against an enemy, or which is engaged in military operations in, or is on the line of march to a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country. **s. 7 (13).**

Enemy includes all armed mutineers, armed rebels, armed rioters, pirates, and persons in arms against whom it is the duty of a person subject to military law to act. The term therefore includes a soldier who has run amok. **s. 7 (12) ; A.R.I., Vol. II., 213.**

A *Military Reward* includes any gratuity or annuity for long service or good conduct ; any good conduct pay, good service pay, or pension, and any other military pecuniary reward. **s. 7 (15).**

An *Offence* means any act or omission punishable under the Act, including a civil offence. **s. 7 (19).**

A *Civil Offence* means an offence which, if committed in British India, would be triable by a criminal court. **s. 7 (18).**

British India means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India, or through any Governor or other

officer subordinate to the Governor-General of India. **Gen. Cl. Act, 1897, s. 3.** For list of places *in* or *out* of British India, *vide* "Manual," p. 133.

A *Court-Martial* means a Court-Martial held under this Act, and therefore does not include a Court-Martial held under the Army Act. **s. 7 (16).**

A *Criminal Court* means a Court of ordinary criminal justice in British India, or established elsewhere under the authority of the Governor-General-in-Council. **s. 7 (17).**

Besides the High Courts there are are five classes of such courts in British India, viz.: Courts of Session, Presidency Magistrates, and Magistrates of three classes. **C.C.P., s. 6.**

Prescribed means prescribed by the Rules made under this Act (s. 113). **s. 7 (21).**

All words defined by the Indian Penal Code, unless otherwise defined in this Act, have the meanings therein given them. **s. 7 (22).**

Words denoting the male gender include words denoting the female, and words importing the singular include the plural, and words in the plural include the singular. **I.P.C., ss. 8–10.**

Wherever the word *year* or *month* is used, the year or the month is to be reckoned according to the British Calendar. **I.P.C., s. 49.**

CHAPTER XVII

MISCELLANEOUS

(i) Exemptions of Officers and Soldiers

The following persons are exempted from paying any tolls when embarking or disembarking at any landing place, or when passing over any turnpike road or bridge, or on being carried by any ferry, when on duty or on the march, viz. :—

(*a*) All officers and soldiers of the Regular Forces, or any local corps, and their authorized followers; and their families, when accompanying any body of troops.

(*b*) All officers and soldiers of Indian States Troops, all members of any Volunteer Corps, and their authorized followers. Volunteers are also exempt when proceeding to or returning from duty.

(*c*) All officers and soldiers of the Indian Reserve Forces proceeding to and from their place of residence, when called out for training.

(*d*) All prisoners under military escort.

(*e*) All horses, carriages, baggage, and slaughter animals of any of the above, and the persons in charge. **I.T. Act, s. 3.**

In order to claim exemption from the toll a pass in the prescribed form must be presented, except in the case of officers and soldiers in uniform on duty, and followers and families and horses and baggage accompanying them. The pass must be signed by the prescribed officer or official.

I.T. Act, s. 7 (2) ; rr. 1, 2, 3.

For form of pass, *vide* Schedule to Rules.

No person subject to the Act, belonging to the Indian Forces, can be arrested for any debt, by any process of any Civil or Revenue Court; and if arrested contrary to this exemption will have a claim for damages against the person who obtained his arrest. **s. 119.**

This does not exempt a person from arrest or summons in a criminal case; and Commanding Officers must give every assistance to the Civil Authorities in such a case. **A.R.I., Vol. II., 282.**

The arms, equipment, clothing, and necessaries of any person subject to the Act, and any horse used by him on duty, and his pay and allowances are all exempt from attachment by order of any Civil or Revenue Court in satisfaction of any decree enforceable against him. Should such an order be made, the officer receiving it will at once, in the name of the soldier or other person concerned, take steps to have the order set aside. **s. 120; A.R.I., Vol. II., 284.**

(ii) Privileges of Officers and Soldiers

When an officer, or soldier, or reservist has obtained leave of absence to enable him to prosecute or defend a suit in a Civil Court, such Court shall, at the request of such person on the presentation, in person in Court, of a certificate from his Commanding Officer that such leave has been granted, arrange if possible for the case to be heard within the period of the leave, irrespective of where it stands in the register of cases. If the case cannot be heard within the period of leave granted, the Civil Authority may grant an extension of leave, reporting at once to the man's Commanding Officer that he has done so. **s. 122; A.R.I., Vol. II., 287, 288.**

If it is impossible for the officer or soldier to obtain leave he may appoint any other person as his attorney to sue or defend in his name. **A.R.I., Vol. II., 285.**

Any person subject to the Act who considers himself wronged by any superior or other officer may, if attached to a troop or company, complain to his company (or other) Commander, or if not so attached, to the officer under whom he is serving. If this officer is the one against whom he has a grievance, the complaint will be made to his next superior. Every officer to whom a complaint is made must investigate it and, if necessary, refer it to superior authority, through the proper channel. **s. 117 ; A.R.I., Vol. II., 668.**

(iii) Sheet Roll Entries

The following entries will be made in the conduct sheet contained in the sheet roll of all persons subject to the Act.

(*a*) In *red* ink—

(i) Forfeiture of seniority of rank (officers and warrant officers).
(ii) Conviction by Court-Martial.
(iii) Conviction by a Civil Court ; except where the punishment was only a fine and the Commanding Officer does not consider it should be a red-ink entry.
(iv) Reduction of a non-commissioned officer.
(v) Deprivation of lance or acting rank or an appointment, for an *offence* but not for *inefficiency*.
(vi) Severe reprimand (officers, warrant and non-commissioned officers).
(vii) Imprisonment.
(viii) Field punishment.
(ix) Confinement to the lines, exceeding fourteen days.
(x) Forfeiture of good service pay or good conduct pay.
(xi) Every offence entailing forfeiture of pay and allowances, except as in (xii) below.

(xii) Every case involving forfeiture of pay and allowances for absence exceeding two days, classified as an offence by the Commanding Officer.

(*b*) In *black* ink —

(i) Any punishment not included above.

(ii) Conviction by a Civil Court, when a fine was the only punishment and the Commanding Officer did not make it a red-ink entry.

(iii) Every case involving forfeiture of pay and allowances for absence not exceeding two days, classified as an offence by the Commanding Officer.

The mode of recording the entries is that given in King's Regulations, where the following rules are laid down, as modified by Indian Army Regulations :

(i) In trials by Court-Martial the " statement of the offence " is to be entered. Where the statement of the offence does not disclose the nature of the offences, brief particulars must be added, *e.g.* " Neglecting to obey station orders—Buying mineral water in the native bazaar."

(ii) Vague entries, such as " improper conduct," are to be avoided.

(iii) The following abbreviations will be used :—

Transportation—Trans.
Imprisonment with solitary confinement—Impt. S.C.
Fine—Fined.
Deprived of Lance Stripe—Depd. Lce. Stripe.

(iv) Imprisonment awarded by a Unit Commander will be entered in days.
the Column of Remarks.

(v) The officer making the entry will initial it in

A.R.I., Vol. II., 713 ; K.R., 1702, 1703.

A Court-Martial Book will also be kept in every unit containing a true copy, signed by the Commanding Officer, of—

(i) Every conviction by Court-Martial.
(ii) Every summary award to an officer or warrant officer under para. 233 (i).
(iii) Every conviction by a Civil Court involving imprisonment exceeding seven days.
(iv) Every declaration of a Court of Inquiry on an absentee under s. 126.

A.R.I., Vol. II., 712.

CHAPTER XVIII

DUTIES IN AID OF THE CIVIL POWER

ANY Magistrate or Officer in charge of a Police Station may order any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the peace, to disperse. **C.C.P., s. 127.**

An *unlawful assembly* is an assembly of five or more with a common object of effecting an unlawful purpose through force or a show of force.

I.P.C., s. 141 ; M.I.M.L., VII., 1.

A *riot* is an unlawful assembly where violence is actually used by the assembly or any member thereof, in prosecution of the common object.

I.P.C., s. 146 ; M.I.M.L., VII., 1.

If such an assembly cannot be dispersed by the Civil Power, the senior Magistrate present may cause it to be dispersed by military force, and may call on any officer or non-commissioned officer in command of troops (including Auxiliaries, Territorials, and Volunteers) to disperse the assembly by force, and arrest the offenders. **C.C.P., ss. 129, 130 ; I.T.F. Act, s. 15 ; M.I.M.L., VII., 3.**

Every such requisition, whether made by writing or telegram, must be complied with immediately by the officer receiving it ; but in carrying out his duties, the officer must use as little force as possible. The strength and composition of the force employed, and the manner in which they are employed will rest with the military authorities.

The amount of force which may be lawfully used in dispersing an unlawful assembly or in quelling a riot,

will depend on the circumstances of each case, for the force must always be strictly limited to that necessary to effect the purpose in view.

C.C.P., s. 130 (2) ; A.R.I., Vol. II., 393 ; M.I.M.L., VII., 3.

When the public security is manifestly endangered by an unlawful assembly, and there is no Magistrate who can be communicated with, any officer of the Army (including Auxiliaries and Territorials) may take any necessary action to disperse the assembly and arrest the offenders, on his own initiative.

C.C.P., s. 131 ; M.I.M.L., VII., 4.

In order that the military authorities may have the earliest opportunity of appreciating the situation, the Commander will detail an officer as " Liaison Officer," to get into personal touch with the Civil Authority, as soon as any warning that troops may be required is received. This officer will, until the troops are no longer required, keep a close touch with the Civil Authorities and Police, and the Officer Commanding the troops. He will render such reports as to the situation as may be required ; and at the end, furnish a brief narrative of all the occurrences and his views as to the cause of the trouble, which will be forwarded to Army Headquarters. **A.R.I., Vol. II., 394.**

When the Officer Commanding is called on to disperse the assembly by force, he will take the best measures possible to explain to the mob that if fire is opened it will be effective. Unless the troops are already organized in platoons and sections, he will tell them off into sections. If the party does not exceed forty men he will tell them off into four sections ; if they are more than forty, then into more sections. He will explain to the men who are the officers or non-commissioned officers to give each section the order to fire, and that no man is to fire without a distinct order from him or the section commander. If he considers the fire of a few men will effect the dispersal of the

assembly, he will personally order a few men by name to fire. Care must be taken not to fire over the heads of the crowd. Sometimes firing on specified ring-leaders will be the best way to attain the object required. Firing with blank is forbidden. The firing must be carried out coolly and with steadiness so that it can be stopped directly it becomes unnecessary.

A.R.I., Vol. II., 395 ; M.I.M.L., VII., 5.

No officer or non-commissioned officer complying with a requisition to assist the Civil Power, and no officer acting on his own initiative, when no Magistrate is available, is deemed to have committed an offence in respect of any such action, provided he acted in good faith ; and similarly no offence is committed by any inferior officer or soldier doing any act which he was bound to obey. No prosecution against any officer or soldier can be instituted in any Criminal Court without the sanction of the Governor-General in Council. **C.C.P., s. 132 ; M.I.M.L., VIII., 6.**

Whenever troops are called out in aid of the Civil Power, the officer sending them must report immediately by telegram direct to the Chief of the General Staff, giving the numbers and if possible, the reason they are required. He will make a similar report when they are withdrawn. Should firing take place, an immediate report is to be made by telegram, giving a rough estimate of the casualties. Progress reports are to be made as considered necessary.

A.R.I., Vol. II., 396.

CHAPTER XIX

THE LAW RELATING TO THE INDIAN ARMY RESERVE

THE Indian Army Reserve is maintained under the authority of the Indian Reserve Forces Act, 1888. This Act provides for two classes—

The Active Reserve, liable to serve in or out of British India.

The Garrison Reserve, liable to serve only in British India. **I.R.F. Act, ss. 2, 3.**

The latter class has been allowed to die out and only the Active Reserve now exists. **Man., VIII., 2.**

The Governor-General-in-Council has power to make rules for the government, discipline, and regulation of the Reserve. The Rules now in force were issued in 1912. **I.R.F. Act, s. 4 ; A.R.I., Vol. II., App. XXVIII.**

The Reserve consists of—

(*a*) Indian Officers ;

(*b*) Persons enrolled under the Indian Army Act and transferred to the Reserve ;

(*c*) Persons enrolled for service in the Reserve. **R.F.R., 3.**

Commissions as officers in the Reserve of the Indian Army Service Corps may be granted to gentlemen of influence who have assisted in transport registration ; or as officers in the Reserve of a Military Railway Company to stationmasters. **R.F.R., 4.**

Except in the case of the Indian Army Service Corps Reserve, the other ranks of the Reserve consist of privates only ; non-commissioned officers can only be transferred as privates. **A.R.I., Vol. II., 158.**

The organization of the Reserve has recently been amended and is now as under.

For Infantry and Pioneers there will be two classes, "A" and "B"; the establishment being for each active battalion of—

Infantry—77 Class A and 227 Class B.
Pioneers—55 Class A and 100 Class B.

A.I., $\frac{639}{23}$

For the other arms of the Service, except Gurkhas and Departmental Corps, the Reserve comprises the following classes :—

Class A.—Men with more than 5 years' army, and less than 8 years' total service.
Class B.—Men with more than 5 years' army, and less than 15 years' total service.
Class I.—Men with more than 2 years' army, and less than 5 years' reserve service, and below 30 years of age.
Class II.—Men with more than 2 years' army service and below 35 years of age.

The Gurkha Reserve consists of men with more than 2 years' army and less than 15 years' total service, and below 35 years of age.

No man can remain in the Reserve after 35 years of age, and as a rule reserve service must not exceed 10 years, and the total army and reserve service 15 years. Transfers between Class A and Class B or Class I. and Class II. are permitted within the authorized establishments, which are fixed for all units from time to time by Army Instructions.

A.R.I., Vol. II., 158, 159 ; A.I., $\frac{639}{23}$

Provided vacancies exist in the establishment, non-commissioned officers and men may transfer to any Class of the Reserve, if they are of good character and are fit for service. Discharged soldiers of good character and with not less than two years' army

service may enrol direct into Class I. or II. or into the Gurkha Reserve; but not into Class A or Class B, which classes are only filled by transfers of men from army service. **A.R.I., Vol. II., 160, 161 ; A.I., $\frac{639}{23}$**

Every reservist must come up for service, training, or muster when ordered by his Commanding Officer, or for service when required by proclamation of the Governor-General-in-Council or other authority empowered by him. He must also always keep his Commanding Officer informed as to his address. He must not leave India, without leave from his Commanding Officer, and must not take service in the militia, police, or a jail. **R.F.R., 5-7.** The Commanding Officers of the various reservists are detailed in A.R.I., Vol. II., 163.

An officer or soldier in the Reserve is subject to military law at all times in the same manner as a person belonging to the Indian Forces.

I.R.F. Act, s. 5.

It is not, however, necessary to assemble a Court of Inquiry when a reservist fails to attend at any place as ordered. **R.F.R., 11.**

If any reservist—

(i) without reasonable excuse, fails to attend at any place when ordered;
(ii) without reasonable excuse, fails to comply with any rule or order;
(iii) fraudulently obtains any pay or other money;

he is liable on conviction by Court-Martial to any punishment not exceeding one year's imprisonment, which the Court can award; or if convicted by a Magistrate of the First Class, to imprisonment up to six months for a first offence and to one year for any subsequent offence. Any person charged under this section can be kept in either military or civil custody.

I.R.F. Act, s. 6.

A reservist who fails to attend at any place when ordered, also forfeits all arrears of pay and allowances.

R.F.R., 12.

The rules for training are laid down in A.R.I., Vol. II., 170, 171. The periods must not exceed for Class A or Class I., one month for every year, and for Class B or Class II., one month every second year, and for Gurkhas two months every second year.

A.I., $\frac{638}{23}$, $\frac{639}{28}$

CHAPTER XX

THE LAW RELATING TO THE INDIAN TERRITORIAL FORCE

THE Indian Territorial Force is constituted under the Indian Territorial Force Act, 1920, and consists of British subjects, other than European British subjects, and subjects of any State in India who may enrol therein. **I.T.F. Act, s. 5.**

The Governor-General-in-Council may make rules for carrying out the Act, and prescribing the conditions and manner of enrolment and discharge, the training to be undergone, the obligations and discipline of University Corps, the pay and allowances of members of the Force, etc. These rules must be published in the *Gazette of India*, and they will then have statutory authority. The Commander-in-Chief may also make regulations providing for the details of organization, duties, military training, equipment, etc., of the Force. **I.T.F. Act, ss. 13, 14.**

In virtue of the power thus given the Governor-General has made "Indian Territorial Force Rules, 1921."

The Local Government of each Province, in which any unit of the Territorial Force has been formed, must constitute an Advisory Committee consisting of three members, one of whom is a Military Officer, appointed by the Officer Commanding the District concerned, and the other two British subjects (not European British subjects) not in Government service, appointed annually, one of whom will be appointed President of the Committee by the Local Government.

I.T.F. Act, s. 12 ; T.F.R., 29.

Their powers and duties are to make recommendations to the Officer Commanding the District regarding :

(*a*) the period of annual training for any unit ;
(*b*) the time and place of training in camp of a University Corps ;
(*c*) any matter concerning recruiting for the Force ;
(*d*) applications for discharge.

T.F.R., 30.

To be eligible to enrol a person must not belong to a "criminal tribe," or have been sentenced to certain punishments, or have already been dismissed from the Force ; he must have a good character, and be between 18 and 31 years of age (except that for University Corps the age is 17, or for an ex-soldier with not less than three years' service the maximum age is 35 years) ; and he must fulfil the conditions as to physical fitness. **T.F.R., 3.**

The period of service is six years from date of attestation, except for a person discharged from a University Corps after two years' service therein, or an ex-soldier with three years' service, or on re-enrolment, in which case the period is four years.

I.T.F. Act, s. 50 ; T.F.R., 10 (1).

A person wishing to enrol must apply to the Commanding Officer of the Corps, or a Recruiting Officer or Magistrate, and will fill up Form I. (*vide* Manual, p. 534) in his presence. In the case of an applicant for a University Corps, this must be countersigned by an officer of his University. If the Commanding Officer is satisfied that he is eligible and has passed the medical examination, he will enrol him, by causing him to fill up Form II. (*vide* Manual, p. 534) and sign the declaration. **T.F.R., 4–8.**

He will then be attested by the Commanding Officer and required to take the oath prescribed in Form II.

T.F.R., 9.

He will then be appointed to his corps or unit, and cannot be transferred to another corps or unit without his consent. He may, at his own request, be attached to any other corps or to the Regular Forces.

I.T.F. Act, ss. 6, 7.

Every Territorial is liable to be embodied for preliminary training for a period not exceeding 28 days, and for annual training for a similar period each year, unless called out for military service in any year. In the case of a member of a University Corps, the preliminary training is 78 hours' drill in the first six months after enrolment and annual training of two hours' drill a week during term time and 15 days in camp. **T.F.R., 15, 16.**

A Territorial is liable to be called out for military service by order of the Senior Military Officer in aid of the Civil Power, or to provide any guards which he thinks necessary; or on embodiment to support the Regular Forces in an emergency, by notification of such embodiment issued by the Governor-General-in-Council; but he cannot be called on to serve out of India, except under a general or special order of the Governor-General. **I.T.F. Act, ss. 9, 10.**

All ranks are entitled to the pay and allowances of the corresponding ranks in the Regular Indian Forces, while called out or embodied for military service or training, except members of University Corps during training. **T.F.R., 17.**

Every person is entitled to be discharged on the expiration of the period of his engagement, unless he is at the time actually on military service, when he is not entitled to be discharged till the termination of such service. A Territorial may apply in writing to his Commanding Officer to be discharged before his service has expired. Such application will be forwarded, with the Commanding Officer's recommendation to the Advisory Committee, who will make their recommendation to the Officer Commanding the District. **I.T.F. Act, 58; T.F.R., 13, 30.**

Any member may also be discharged for any of the following reasons :

(*a*) On conviction of an offence punishable by transportation or imprisonment.
(*b*) Knowingly making any false statement on enrolment.
(*c*) Services no longer required.
(*d*) As medically unfit for further service.
(*e*) On ceasing to be connected with the University, in the case of a University Corps.

T.F.R., 11.

All ranks are subject to the Indian Army Act and the Rules when—

(*a*) Called out or embodied on military service ;
(*b*) Attached to any regular forces ;
(*c*) Undergoing training.

In the last case the Act and Rules can be modified as prescribed, and in the case of University Corps the members will only be subject to such disciplinary rules as may be prescribed. **I.T.F. Act, s. 11.**

The modifications which have been made in the case of ordinary Territorial Corps are prescribed in the Second Schedule attached to the Rules ; the following are the most important :—

(*a*) A Commanding Officer cannot award more than 10 days' imprisonment.
(*b*) The maximum punishment for " Desertion " is 6 months' imprisonment.
(*c*) The maximum imprisonment for offences under s. 26, " Offences in respect of Military Service " ; s. 28, " Insubordination " ; and s. 34, " Allowing prisoners to escape," is one year.
(*d*) The maximum imprisonment for " Intoxication " is 2 months.
(*e*) In all other cases when imprisonment is the maximum punishment, the limit is 6 months.
(*f*) Field punishment cannot be awarded.

T.F.R., 18, Sch. II.

In the case of University Corps out for training the various military offences against the Indian Army Act, which are considered offences, are detailed in Rule 19. When any member of such a Corps is charged with any of these offences the Commanding Officer will investigate the charge, and either deal with it himself or remand it for trial by Court-Martial, or if it is also an offence against the criminal law may hand the offender over for trial by a Criminal Court. **T.F.R., 20.**

The minor punishments which the Commanding Officer can summarily award are :—

(*a*) Dismissal ; with or without forfeiture of all arrears of pay and allowances.
(*b*) Detention in military custody, not exceeding 10 days.
(*c*) Stoppages to make good any damage or loss.
(*d*) Additional drills, not exceeding 10 hours.
(*e*) In the case of a non-commissioned officer, reduction, or forfeiture of seniority.
(*f*) Severe reprimand, reprimand, or admonition.
T.F.R., 21.

If the case is dealt with by Court-Martial, the Court must be constituted of three officers, two of them officers of the Regular Forces and the third an officer of the Indian Territorial Force. The Court can sentence the offender, if convicted, to a fine not exceeding Rs.200 for certain specified offences ; and for any other offence to imprisonment not exceeding two months, or a fine as above, or both ; or in any case to any punishment the Commanding Officer could have awarded. The procedure of the Court will be that prescribed by Army Act Rules. **T.F.R., 23–25.**

APPENDIX

A TABLE OF DIFFERENCES BETWEEN INDIAN MILITARY LAW AND BRITISH MILITARY LAW

Indian Law	British Law
1. The Army Act remains in force, without annual renewal.	1. The Army Act only remains in force for such time as an Annual Act may determine. ***s. 2.**
2. The Rules not only deal with Court-Martial procedure but also with discharges, field punishment, and collective fines. **s. 113.**	2. The Rules of Procedure only deal with procedure and execution of sentences. **s. 70.**
3. The Reserves are always subject to military law. **I.R.F. Act, s. 5.**	3. The Reserves are only subject under stated conditions. **ss. 175 (10), 176 (5).**
4. Civilians are subject as officers, warrant officers, non-commissioned officers or soldiers. **s. 3.**	4. Civilians are subject as officers or soldiers. **ss. 175 (7), (8), 176 (9), (10).**
5. Transportation; minimum 7 years. **s. 43.**	5. Penal servitude; minimum 3 years. **s. 44.**
6. Imprisonment; maximum 14 years. **s. 43.**	6. Imprisonment; maximum 2 years. **s. 44.**
7. No such punishment as detention.	7. Detention; maximum 2 years. **s. 44.**
8. No limit to consecutive sentences of imprisonment.	8. Imprisonment or detention cannot exceed 2 years, under consecutive sentences. **s. 68 (2).**
9. Field punishment cannot be awarded to a warrant officer. **s. 45.**	9. Field punishment can be awarded to a warrant officer, except by a District Court-Martial. **ss. 44, proviso (5), 182 (2).**
10. Only officers can be reprimanded or severely reprimanded by Court-Martial sentence. **s. 43.**	10. Warrant officers and non-commissioned officers can also be so punished by Court-Martial. **s. 44.**

* The abbreviation "s." in this column refers to the Army Act, 1881 (British).

Indian Law	British Law
11. Collective fines can be awarded to companies, etc., for loss of arms. **s. 21 ; r. 157.**	11. No such power.
12. Absence for 12 hours partly in different days, counts as 2 days' absence. **s. 50.**	12. No absence for less than 24 hours counts as more than one day. **s. 140 (2).**
13. Certain prescribed officers can remit forfeitures of pay. **s. 52 ; r. 163.**	13. No officer has such power; such remission can only be made by Royal Warrant or by the Army Council. **s. 139.**
14. Violence to superior in any circumstances is punishable by death. **s. 27.**	14. Only punishable by death if superior is in the execution of his office. **s. 8 (1).**
15. Desertion at any time is punishable by death. **s. 29**	15. Desertion is only punishable by death on active service or under orders for active service. **s. 12.**
16. No higher punishment for a second offence of desertion. **s. 29.**	16. A second or subsequent offence of desertion is punishable by penal servitude instead of imprisonment. **s. 12.**
17. Court of Inquiry on illegal absence is held after 60 days. **s. 126.**	17. Court of Inquiry held after 21 days. **s. 72.**
18. Attempts to commit, or abetting, any offence are substantive crimes. **ss. 39A, 40.**	18. Except in the cases specially made offences, attempts must be charged as conduct to the prejudice. **s. 40.**
19. Soldier cannot claim Court-Martial instead of taking Commanding Officer's award.	19. Soldier can claim trial by Court-Martial instead of taking Commanding Officer's award. **s. 46 (8).**
20. Warrant officers can be punished by the Commanding Officer. **s. 20 ; A.R.I., Vol. II., 233.**	20. Warrant officers cannot be punished by the Commanding Officer. **s. 182 (1).**
21. Imprisonment and field punishment are minor punishments. **s. 20 (2).**	21. Detention and field punishments are summary and not minor punishments. **s. 46 ; K.R., 554.**
22. Company Commander can award 10 days' confinement to lines. **A.R.I., Vol. II., 233.**	22. Company Commander cannot award more than 7 days' C.B. **K.R., 562.**
23. The Adjutant and other officers can award confinement to lines. **A.R.I., Vol. II., 233.**	23. These officers cannot make any award.
24. There is no power to compel the attendance of a civilian witness at the taking of a summary of evidence.	24. A civilian witness can be summoned to the taking of a summary of evidence. **s. 125 (3).**

Indian Law	British Law
25. The accused must be warned for trial a reasonable time beforehand, no fixed time. r. 23 (A).	25. The accused must be warned not less than twenty-four hours before trial. R.P., 14 (A).
26. The warrant authorizing an officer to convene and confirm a General Court-Martial is issued by the Commander-in-Chief. s. 54.	26. The warrant authorizing an officer to convene and confirm a General Court-Martial is issued by the King. s. 122.
27. The legal minimum for a General Court-Martial is seven; unless the Convening Officer certifies this number is not obtainable, then five. s. 57.	27. The legal minimum is always five. s. 48 (3).
28. No restriction as to rank of the officers. s. 57.	28. Four at least must be of the rank of Captain or over. s. 48 (3).
29. There is no rule as to the minimum service for members of Courts-Martial.	29. An officer must have held a commission for 3 years to be eligible for a General Court-Martial, and 2 years for a District Court-Martial. s. 48 (3), (4).
30. The members of a District Court-Martial can all belong to the same corps or unit.	30. The members of a District Court-Martial must not all belong to the same unit, unless the Convening Officer certifies he cannot appoint others. R.P., 20 (A).
31. The senior member presides. s. 77.	31. The President must be appointed by name. R.P., 17 (D); K.R., 638.
32. A Superintending Officer must be appointed to a Court composed of Indian Officers, where there is no Judge-Advocate. s. 79.	32. No such officer at British Courts.
33. Summary General Court-Martial. s. 62.	33. Field General Court-Martial. s. 49 (1).
34. Summary Court-Martial. s. 64.	34. No such Court exists.
35. A person cannot be tried by Court-Martial after ceasing to be subject to military law.	35. A person can be tried by Court-Martial after ceasing to be subject to military law for an offence committed while subject, if the trial begins within three months of his ceasing to be subject. s. 158.

Indian Law	British Law
36. A challenge to any member at any Court-Martial is allowed if one-half the members are in favour of it. **s. 80 (3).**	36. At a General or District Court-Martial, the challenge to the President is allowed if one-third of the members are in favour of it, to a member if one-half; at a Field General Court-Martial if any one member is in favour of it. **s. 51 (3), (5); R.P., 110 (B).**
37. The form of oath for members of the Court is prescribed in the Rules, and varies from that in the Army Act (British). **r. 35.**	37. The form of oath is prescribed in the Act. **s. 52 (1).**
38. Acquittal is not announced in Court. **r. 52.**	38. Acquittal on any charge is announced in Court. **s. 54 (3); R.P., 45 (A).**
39. If there is an equality of votes as to the sentence, the accused gets the benefit and the more lenient sentence is imposed. **s. 81.**	39. In case of equality of votes as to the sentence the President has a casting vote. **s. 53 (8); R.P., 69 (B).**
40. At a Summary General Court-Martial sentence of death is carried if two-thirds are in favour of it. **s. 87.**	40. At a Field General Court-Martial, sentence of death is only carried if the members are unanimously in favour of it. **s. 49 (2); R.P., 118 (A).**
41. Finding of acquittal requires confirmation. **s. 94.**	41. Finding of acquittal does not require confirmation. **s. 54 (3).**
42. On revision the Court can— (i) revise a finding of acquittal; (ii) take additional evidence; (iii) increase the former sentence. **s. 100.**	42. On revision the Court cannot— (i) revise a finding of acquittal; (ii) take any additional evidence; (iii) increase the former sentence. **s. 54 (2), (3).**
43. A suspended sentence continues to run during suspension. **I.A. (Sus. Sen.) Act, s. 4.**	43. A suspended sentence ceases to run from date of suspension until a committal order is signed directing it to be put in operation. **s. 57A, (3).**
44. A Provost-Marshal can, on active service, punish summarily menial servants caught red-handed. **s. 24.**	44. A Provost-Marshal has no power of summary punishment. **s. 74.**

Indian Law	British Law
45. A letter from any Military or Civil Officer corroborating any statement in defence at a trial for desertion or absence is admissible. **s. 92.**	45. No such rule.
46. The terms of a complaint made shortly after the alleged offence occurred are admissible. **M.I.M.L., V., 17.**	46. Such complaints are only admissible in cases of rape and like offences.
47. In conspiracy acts or statements of conspirators in furtherance of the common object are admissible even if said or done before or after the accused joined the conspiracy. **I.E. Act, s. 10.**	47. Only such acts or statements as took place during the time the accused belonged to the conspiracy are admissible. **Man., VI., 26.**
48. A confession affecting an accomplice may be taken into consideration by the Court. **I.E. Act, s. 30.**	48. A confession is only admissible against the person making it. **Man., VI., 73.**
49. A confession is deemed to be voluntary unless the accused proves it is not. **M.I.M.L., V., 28.**	49. It must be proved that the confession was made voluntarily before it can be used. **Man., VI., 74.**
50. No confession made to a Police Officer or while in police custody is admissible. **I.E. Act, ss. 25, 26.**	50. There is no such rule.
51. A dying declaration is admissible at any trial where the death of declarant is a relevant fact, and it need not have been made in fear of immediate death. **I.E. Act, s. 32 (1); M.I.M.L., V., 39.**	51. A dying declaration can only be used at the trial for the murder or manslaughter of the declarant, and must have been made in fear of immediate death. **Man., VI., 49, 50.**
52. Statements made in the ordinary course of business are admissible, even though it was not the person's duty to make them, and even if not made contemporaneously. **I.E. Act, s. 32 (2); M.I.M.L., V., 41.**	52. Such statements are only admissible if made in the course of duty and at the time the incidents occurred. **Man., VI., 56.**
53. A certificate from a Provost-Marshal, Officer Commanding a body of troops, or Officer in Charge of a Police Station is admissible as evidence of the arrest or surrender of the accused. **s. 91A (5).**	53. Such certificate is only admissible when the accused surrendered. **s. 163 (i), (j), (k).**

Indian Law	British Law
54. An accused person is incompetent to give evidence. **M.I.M.L., V., 88.**	54. The accused is competent but not compellable to give evidence in his defence. **R.P., 80 (1) ; Man., VI., 83.**
55. The wife of the accused is competent as a witness either for the prosecution or defence. **I.E. Act, s. 120.**	55. The wife of the accused is as a rule only competent for the defence if her husband calls her, except in certain cases provided by various statutes. **Man., VI., 86.**
56. No particular number of witnesses is required to prove any fact. **I.E. Act, s. 134.**	56. As a rule one credible witness is enough, except where some act requires two witnesses, or the corroboration of one witness, *e.g.* perjury. **Man., VI., 45.**
57. A witness may be compelled to answer a question incriminating him or his wife, but his answer cannot be used in any criminal prosecution, except for false answer. **I.E. Act, s. 132.**	57. A witness is privileged from answering any such question. **Man., VI., 93.**
58. The credit of a hostile witness may be impeached.	58. The credit of a hostile witness cannot be impeached. **Man., VI., 111.**
59. Evidence taken on commission is admissible. **s. 85.**	59. There is no provision for evidence being taken on commission at a Court-Martial.
60. All ranks must be enrolled, and all combatants and certain other specified persons must be attested. **ss. 8, 11 ; r. 8.**	60. Soldiers are attested. **s. 80.**
61. Every person who has been in pay for six months is deemed to have been properly enrolled. **s. 10.**	61. Every soldier in pay for three months is deemed to have been properly attested or re-engaged. **s. 100 (1).**
62. Persons subject to the Act, who have been granted leave to prosecute or defend suits in the Civil Courts, can have their cases heard out of turn. **s. 122.**	62. No such privilege exists.

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